

EVIDENTIARY HEARING and SCHEDULING CONFERENCE
BEFORE THE
CALIFORNIA ENERGY RESOURCES CONSERVATION
AND DEVELOPMENT COMMISSION

In the Matter of:)	
)	
Application for Certification)	Docket No.
for the Morro Bay Power Plant)	00-AFC-12
Project)	
_____)	

1055 MORRO AVENUE
MORRO BAY, CALIFORNIA

MONDAY, DECEMBER 17, 2001

10:10 a.m.

Reported by:
James A. Ramos
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

Michal Moore, Commissioner, Presiding Member

Stanley W. Valkosky, Hearing Officer

Terry O'Brien, Adviser to Chairman Keese

STAFF AND CONSULTANTS PRESENT

Caryn Holmes, Staff Counsel

Kae C. Lewis, Project Manager

Steve Baker

Chris Huntley

Richard Minetto
RM Engineering, LLC

APPLICANT

Christopher T. Ellison, Attorney,
Ellison, Schneider and Harris

Andrew L. Trump, Director of Business Development
Western Region

Robert E. Cochran, II, Project Manager

Randall Hickok, Senior Director of California
Assets

Romulo F. Barreno, Power Transmission Manager
Duke Energy North America

Russell J. Poquette, Executive Project Director
Duke Fluor Daniel

Peter Okurowski, Senior Associate
California Environmental Associates

G. Allan Jones
Electrical Energy Systems Analysis

INTERVENORS

Patti Dunton

INTERVENORS

Henriette Groot, President
Bonita L. Churney, Attorney
Bryan Cave LLP
Pamela Soderbeck
Don Boatman, High Voltage Electrical Consultant
Jack McCurdy
Brian Stacy
Coastal Alliance on Plant Expansion

ALSO PRESENT

Robert Schultz, City Attorney
Rick Algert, Harbor Director
City of Morro Bay
Steven J. Elie, Attorney
Barry Groveman, Attorney
Musick, Peeler, Garrett, LLP
representing City of Morro Bay

Johan Galleberg, Grid Planning Engineer
California Independent System Operator

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1 P R O C E E D I N G S

2 10:10 a.m.

3 PRESIDING MEMBER MOORE: My name is
4 Michal Moore; I'm a Commissioner at the California
5 Energy Commission, and I'm the Presiding Member
6 over the siting case Committee that is reviewing
7 this application for the Morro Bay Power Plant.

8 I'm joined on the dais by, on my right,
9 Stan Valkosky, the Chief of our Hearing Office in
10 Sacramento; and Terry O'Brien, who is the Special
11 Advisor to Commissioner Bill Keese, who is the
12 Second Member of this Committee, and who is on
13 another assignment today elsewhere in the state.

14 I'd like to make some opening comments
15 and sort of set the stage for this and the
16 following series of hearings, which will take
17 place down here in the area. And which will
18 comprise our record of this case on which I'll
19 base my decision at the end.

20 But prior to doing that let me proceed
21 around so that there are introductions of everyone
22 who is going to be participating in the hearing
23 today. And I will start with applicant. Mr.
24 Ellison, if you'd like to introduce your team for
25 the record.

1 And by the way, for our scribe, it's
2 going to make his job a lot easier if, when you do
3 come up to testify, you'd hand him a business card
4 with your name and your address. He will have it
5 for the record. Just makes his life a lot easier.

6 Mr. Ellison.

7 MR. ELLISON: Thank you, Commissioner
8 Moore. I am Christopher Ellison, Ellison,
9 Schneider and Harris, on behalf of Duke Energy
10 Morro Bay LLC. To my left is Mr. Peter Okurowski
11 from California Environmental Associates.

12 To my right is Andrew Trump, Director of
13 Business Development. And to his right is Mr.
14 Robert Cochran, who is the Director of Operations.

15 PRESIDING MEMBER MOORE: Thank you. And
16 for the California Energy Commission Staff, Kae.

17 Oh, by the way, these microphones are
18 normally off because just to try and eliminate
19 table noise for the recording devices. So when
20 you come to speak I'm going to just ask you if you
21 can turn your microphone on, and then when you're
22 done, turn it back off again. It's going to make
23 it a lot easier for the recording staff here.

24 Ms. Lewis.

25 MS. LEWIS: My name is Kae Lewis; I'm

1 the Project Manager at the Energy Commission. And
2 to my right is Caryn Holmes, Staff Counsel.

3 PRESIDING MEMBER MOORE: Thank you. And
4 for the intervenors. First, is there a
5 representative of the City of Morro Bay here?

6 MR. SCHULTZ: Yes, Rob Schultz from the
7 City of Morro Bay, City Attorney. And to my left
8 is special counsel Steve Elie from Musick, Peeler
9 and Garrett.

10 PRESIDING MEMBER MOORE: Thank you. And
11 for CAPE?

12 MS. CHURNEY: Bonita Churney
13 representing the Coastal Alliance on Plant
14 Expansion. With me is Henriette Groot, President
15 of the Coastal Alliance. And Pam Soderbeck, who
16 will be assisting me.

17 And I'd like to note for the record that
18 I have been retained to represent the Coastal
19 Alliance with respect to air quality and health
20 issues only. And I will not be representing the
21 group with respect to water or marine biological
22 issues.

23 PRESIDING MEMBER MOORE: Thank you. Are
24 there any other public agencies who are
25 represented here in the audience who are intending

1 to be part of today's hearings?

2 All right, seeing none, is there a
3 representative of the Public Adviser here? The
4 California Energy Commission Public Adviser's
5 Office is available for advice. You can reach
6 them via the website, California Energy Commission
7 website; or they have an 800 number which we can
8 give you at the end of the meeting.

9 All right, let me set the stage then to
10 tell you what we're going to be accomplishing
11 today. These are the beginnings of the
12 evidentiary hearings for the proposed Morro Bay
13 Power Plant Project.

14 We noticed the hearings for today; and
15 we indicated, if necessary, we have the space
16 reserved for tomorrow, so these hearings could, in
17 fact, go on to tomorrow, as well. We issued that
18 order on December 4th this year.

19 That document also contained filing
20 dates for testimony for the rest of the hearings.

21 The City filed last Wednesday a petition
22 for reconsideration of the hearing order, along
23 with a petition for a full Commission review of
24 the hearing order and an immediate stay of the
25 hearing order pending an interlocutory review.

1 We also received a response to that
2 petition from the intervenor CAPE that's dated
3 December 14.

4 The City, I note, should, at the close
5 of today's hearings, indicate whether it wishes to
6 proceed with an appeal to the full Commission. If
7 so, you must file such an intention and any
8 clarification to the petition no later than
9 December 27th.

10 The Committee denied the first petition
11 in a December 14th ruling. And fully intends to
12 proceed today with the agenda, as reflected on the
13 revised topic and witness schedule handout, unless
14 there is a reason to modify this. And I suspect
15 that if there is such a reason we'll hear about it
16 today.

17 In addition to the November 2001 staff
18 assessment and the AFC document and its associated
19 supplements, other filings that are pertinent to
20 this set of hearings include the applicant's group
21 one testimony filed December 11, 2000; the
22 applicant's clarifications to the final staff
23 assessment conditions dated December 4, 2001; the
24 errata to the final staff assessment dated
25 December 11, 2001; the testimony of Mr. Algert and

1 Mr. Schultz on behalf of the City dated December
2 11, 2001; the testimony of the California
3 Independent System Operator dated November 15,
4 2001; the testimony of the intervenor CAPE on
5 group one topics dated December 10, 2001; and the
6 errata two and additional testimony for the final
7 staff assessment part one dated December 14, 2001.

8 The purpose of these formal evidentiary
9 hearings is to establish the factual record
10 necessary to reach a decision in the case. It's
11 done through the taking of written and oral
12 testimony as well as exhibits from the parties.

13 These hearings tend to be more
14 structured than the Committee conferences and the
15 informal staff workshops which have already
16 occurred. I'll come back to that in a second.

17 A party sponsoring a witness should
18 briefly identify the witness' qualifications and
19 have the witness orally summarize the prepared
20 testimony before requesting that that testimony be
21 moved into evidence. That will also be done under
22 oath.

23 Relevant exhibits may be offered into
24 evidence at that time. At the conclusion of a
25 witness' direct testimony the Committee will

1 provide the other parties with an opportunity for
2 cross-examination, followed by redirect and
3 recross-examination as appropriate.

4 At the conclusion of each topic area we
5 will provide an opportunity for public comment on
6 that topic, but not cross-examination. The only
7 access to cross-examination of a witness is
8 afforded to intervenors; and beyond that we're
9 open to public comment and testimony.

10 Parties are encouraged to consolidate
11 presentation by witnesses or cross-examination to
12 the greatest extent possible in order to minimize
13 duplication and conserve what will amount to
14 probably pretty precious hearing time.

15 Before we start I need to point out a
16 couple of things especially for the lay
17 intervenors. Realize that unless you've prefiled
18 testimony for your witness, as directed in the
19 hearing order, you will not be allowed to have the
20 witness testify. These are formal proceedings,
21 and as I've tried to stress throughout this, the
22 option of becoming an intervenor brings with it
23 serious responsibilities and commitments. And I
24 want to make sure everyone understands that.

25 That there is a formal process once you

1 enter this stream, we expect you to play according
2 to the rules, and strictly according to the rules.
3 There won't be any deviation.

4 Please don't be repetitive in asking
5 questions of the witnesses. And I would ask where
6 there are different parties interested in the same
7 matter, if we can consolidated the questions so we
8 don't have repetition, it's going to be easier.

9 I will limit the questioning to relevant
10 matters on the testimony, and I will be the judge
11 of that. And when I make a determination, it will
12 be final.

13 I don't expect any arguing with the
14 witnesses. Part of the procedure up here is that
15 I expect testimony and factual evidence. This is
16 not a debating society, and we won't conduct it
17 that way.

18 Please don't testify or offer testimony
19 while cross-examining a witness. We're trying to
20 clarify what a witness is saying as opposed to
21 trying to cross-examine, and I think that
22 procedure is probably clear on its surface.

23 The other thing which is important and
24 makes life a lot easier here is that when you're
25 asking a question if you have a specific page of

1 their testimony that you're pointing to, and/or an
2 exhibit, would you call it out. When we go back
3 to the record, and believe me, the record on this
4 is going to be voluminous and it will be tedious
5 for us to go back to try and support the decision
6 that will come out. And to be able to be specific
7 as far as testimony or an exhibit, it's going to
8 make life just that much easier.

9 Direct testimony must be on matters
10 within the witness' personal knowledge. There are
11 different rules for witnesses who qualify as
12 experts, who by virtue of their education or
13 experience, are allowed to render an expert
14 opinion based on studies or reports that they've
15 done.

16 Just a word on process here. I
17 understand that there have been various petitions
18 filed about this. I want to make it clear that
19 this process, now it's underway and it is
20 launched, is, as I said before, formal; and it is
21 guided by a set of well established rules.

22 I understand that there are other
23 efforts being made outside, dealings with parties,
24 negotiations of one kind or another, and I
25 understand that they will be concluded or not

1 during the process of this. And that is of
2 interest to us, but it is not critical to our
3 deliberations.

4 I will not let these hearings become a
5 part of a negotiating strategy by any party. They
6 will not. So I want to make it clear to every
7 party here that when I publish an order that says
8 when we're going to take testimony, especially
9 when I do it on the advice of people who have
10 testified in these chambers, and indicated to me
11 that they can make a hearing date or that they
12 intend to be here, I will take you at your word.
13 I will base my decision and I will base the timing
14 on the testimony that I've gotten.

15 If you then later recant, or you decide
16 that it is part of a better strategy to change
17 those times that you can report, your witnesses
18 become mysteriously unavailable, you know what,
19 the hearings are going to go on and you'll miss
20 the opportunity to testify.

21 So I want to make it clear that I take
22 people at their word. I operate as straight up as
23 I possibly can in these hearings. And to the
24 extent possible, we will get every bit of evidence
25 that we can on the record because keep in mind I

1 can only make the decision based on what is
2 officially on the record. Not anything that I
3 know or hear about outside these chambers.

4 So it's very important for me to get as
5 complete a record as possible. And that means
6 having every possible witness that is relevant to
7 this case testify in as expansive a manner and as
8 explicit a manner as we possibly can. But if
9 they're not here, and that's part of another
10 agenda, I'm not going to be responsible for that.
11 I'll give you every opportunity to play and to
12 honor your commitments to me to be here during the
13 time allotted.

14 As far as the evidentiary presentations
15 to, I'm going to turn to Mr. Valkosky and ask him
16 for some advice on next steps. And then I'll go
17 back to the hearing schedule and we'll start this
18 morning.

19 Mr. Valkosky.

20 HEARING OFFICER VALKOSKY: Thank you,
21 Commissioner. Before we begin I'd like all
22 parties to be aware that we are doing two discrete
23 things today. First, we're going to do the
24 evidentiary presentation.

25 And after the conclusion of that

1 presentation, we will then go to a scheduling
2 conference, which will be very similar to the
3 prehearing conference that I believe you all
4 attended last November.

5 To insure that we're all on the same set
6 of pages, I've prepared two handouts. And I
7 believe I've distributed them to all the parties.
8 If not, there are also copies available in the
9 back.

10 The first handout is entitled the
11 revised topic and witness schedule. That reflects
12 the order of evidentiary presentations that we
13 intend to pursue today.

14 If there is good reason, such as a
15 witness is on his way or something, we may modify
16 that. But, at present, that is the agenda.

17 The second is an exhibit list, revised
18 December 13th. And we have some 124 entries on
19 that. That is what we will be using to reflect
20 and identify the documents, as well as record any
21 which are received into evidence today.

22 On that, Mr. Ellison, I got an email
23 submission from applicant's group one exhibit
24 list, and I'd just like to clarify this on a
25 couple of points.

1 One, this indicates the exhibits which
2 you will seek to introduce in this set of
3 hearings, is that correct?

4 MR. ELLISON: That is correct.

5 HEARING OFFICER VALKOSKY: And, two, the
6 second and third entries, which are designated by
7 asterisks, do you want individual numbers assigned
8 to each of those, or are they included within
9 another filing?

10 MR. ELLISON: We have determined that
11 those two documents were included in the
12 application for certification, which is exhibit 4
13 on your exhibit list.

14 HEARING OFFICER VALKOSKY: All right, so
15 that is part of exhibit 4.

16 Finally, parties should be aware that
17 we've reorganized intervenor CAPE's December 10th
18 filing and we've reflected that on the tentative
19 exhibit list. We haven't deleted anything from
20 it. It's just that at least in our opinion it was
21 easier to separate it into three exhibits which
22 we've designated exhibits 121, 122 and 123. And,
23 again, that will be on the last page of the
24 exhibit list.

25 And furthermore, we've agendaed Mr.

1 Stacy and Mr. McCurdy to testify under the
2 compliance topic. That's also reflected on the
3 revised attachment A handout.

4 I'd like to preface this with saying I
5 think it will be more efficient to proceed by
6 having them testify there. I realize the nature
7 of the concerns that CAPE has, specifically
8 regarding the terrorism issue, cross into a lot of
9 topic areas. And I think it's more appropriate,
10 for example, if there's a question about
11 transportation of hazardous materials, to raise
12 that specific question during cross-examination on
13 that topic.

14 And, again, all I'm attempting to do
15 here is just to get out the general concerns, let
16 your witnesses have an opportunity to testify, and
17 then move on.

18 MS. CHURNEY: May I make a comment with
19 respect --

20 HEARING OFFICER VALKOSKY: Certainly.

21 MS. CHURNEY: -- to the revised
22 schedule? One of our witnesses, Mr. Boatman, has
23 taken off work today, a great hardship. He is
24 working in the energy industry, and currently is
25 working at Calpine in King City, trying to get

1 that generator up and running.

2 He is available today to testify, and he
3 is listed to testify with respect to transmission
4 line safety and nuisance and system engineering,
5 which I note is down at the end of your list.

6 Is there a way just to assure that he
7 will be able to testify today, that if these
8 hearings appear to be extending over until
9 tomorrow, that he can be taken out of order, or
10 those subjects can be taken out of order so that
11 he can testify today?

12 HEARING OFFICER VALKOSKY: Yes, there
13 is, but let's reevaluate that at a later point in
14 the hearing. But, certainly we will make every
15 reasonable attempt to accommodate witnesses.

16 MS. CHURNEY: Thank you.

17 HEARING OFFICER VALKOSKY: Okay. Mr.
18 Ellison.

19 MR. ELLISON: In that same vein and on
20 that same topic, we have a witness, Mr. Hickok,
21 who is going to testify very briefly in rebuttal
22 to one portion of CAPE's testimony.

23 He is also involved in the energy
24 industry and if it is acceptable to the parties
25 what we would like to do is to agree that we will

1 take up the transmission line issues at a fixed
2 time immediately after lunch so that I can excuse
3 him for this morning.

4 HEARING OFFICER VALKOSKY: That will be
5 fine. We will then attempt after lunch, which I
6 don't know exactly when that would be, but it
7 would likely be in the 1:00 to 2:00 timeframe. We
8 will do the transmission issues at that time.

9 MR. ELLISON: Can I safely tell him that
10 he doesn't need to worry about this until 1:00 at
11 the earliest?

12 HEARING OFFICER VALKOSKY: Yes.

13 MS. CHURNEY: I have a few other
14 housekeeping issues. I was wondering if this was
15 the proper time?

16 PRESIDING MEMBER MOORE: This is the
17 right time. We're going to get into housekeeping.
18 So, let me just turn to staff first. Ms. Lewis,
19 housekeeping items? Scheduling? All right. The
20 intervenors, CAPE.

21 MS. CHURNEY: How do you desire to have
22 objections to testimony raised? Certainly we have
23 the written testimony and objections could be
24 raised before the witness even speaks based on the
25 written testimony. Or do you want us to reserve

1 them until they are on the stand and speaking?

2 HEARING OFFICER VALKOSKY: I would
3 prefer that you reserve them until after the
4 witness has presented the testimony orally.

5 MS. CHURNEY: Okay. And we have gone
6 through the exhibit list and find that we are
7 missing approximately 40 exhibits that have not
8 been provided to us by the applicant. And we have
9 a list of the ones that are missing that we could
10 not locate in our files, have never been served on
11 the Coastal Alliance. How --

12 HEARING OFFICER VALKOSKY: Are those
13 exhibits that are relevant to today's hearing?

14 MS. CHURNEY: Some may be, some may be
15 not. It's --

16 HEARING OFFICER VALKOSKY: Well, we can
17 check that because I have a list of the -- looks
18 like about a dozen exhibits that the applicant has
19 identified as being relevant to today's topics.

20 MS. CHURNEY: I guess we don't have that
21 most recent list --

22 HEARING OFFICER VALKOSKY: I was under
23 the impression that had been emailed. I'm sorry.
24 The numbers I have -- and, Mr. Ellison, check me
25 if I'm wrong -- are exhibits 3, 4, 19, 22, 38, 46,

1 48, 51, 79, 95, 108, and I would also add to that
2 exhibit 117, which is applicant's testimony on
3 group one issues.

4 Was there anything in addition to that,
5 Mr. Ellison?

6 MR. ELLISON: No, there is not. Just by
7 way of clarification for CAPE's assistance, these
8 are -- the exhibits that you just named are the
9 exhibits that are specifically named in the
10 testimony for these group one issues.

11 And so all parties who have been served
12 with the testimony have been served with notice
13 that these are the exhibits that we intended to
14 introduce as part of that testimony.

15 HEARING OFFICER VALKOSKY: Does the
16 intervenor lack any of those exhibits?

17 MS. CHURNEY: We are lacking exhibit
18 108.

19 HEARING OFFICER VALKOSKY: 108? Mr.
20 Ellison, do you have an extra copy of that?

21 MR. ELLISON: Yes. We'll provide a copy
22 to CAPE.

23 HEARING OFFICER VALKOSKY: Thank you.
24 Insofar as the other exhibits, there are three
25 ways that I can think of immediately of getting

1 those exhibits.

2 One is to directly contact our docket
3 unit; ask them to copy the exhibit. The other is
4 to contact the Public Adviser's Office; ask them
5 to copy and forward the exhibit to you. And
6 third, just directly approach the applicant and
7 ask them for a copy of the exhibit.

8 Mr. Ellison, to the extent that you have
9 the exhibits available, I presume you have no
10 objection to providing them to the intervenor?

11 MR. ELLISON: No, we do not object.

12 HEARING OFFICER VALKOSKY: There you go.

13 MS. CHURNEY: We can provide a complete
14 list, then, to the applicant of all the missing
15 exhibits today and hopefully get them before the
16 next hearings.

17 HEARING OFFICER VALKOSKY: Great.

18 MS. CHURNEY: Finally, there was a late
19 filing just this Friday of a supplemental power
20 plant efficiency section of the FSA. And I would
21 like to object on the record to this late filing.

22 I believe it would restart the 14-day
23 period running, within which we would have
24 opportunity to prepare for and then schedule a
25 hearing under 20 CCR 1747. The FSA is required to

1 be filed at least 14 days before the start of the
2 evidentiary hearings.

3 That supplemental filing on the topic of
4 power plant efficiency, I believe, restarts that
5 time period. So I would object to that section of
6 the FSA being considered today.

7 HEARING OFFICER VALKOSKY: Okay, for the
8 record I believe you're referring to exhibit 124,
9 which we've identified as the errata and
10 additional testimony to the staff assessment, is
11 that correct?

12 MS. CHURNEY: That's correct.

13 HEARING OFFICER VALKOSKY: Ms. Holmes,
14 any response?

15 MS. HOLMES: As we pointed out in the
16 cover sheet to the filing, this is a document that
17 we had prepared, I believe it was last summer, in
18 response to a data request that was served on
19 everybody. Everybody's had a chance to see it.
20 So I don't think that there's any prejudice
21 involved.

22 In addition, as a result of the issues
23 that CAPE raised in its direct testimony, we were
24 prepared to offer substantially similar testimony
25 on -- we had a chance to put Mr. Baker on as

1 rebuttal, which at the last prehearing conference
2 the Committee said they would allow.

3 So, it's my belief that it's acceptable
4 either way.

5 MS. CHURNEY: Although it is true that
6 that document was served within another document
7 in September, I believe, until Friday we had no
8 knowledge that staff was going to take that
9 position.

10 When the original FSA part one was
11 filed, it was missing, it was not included. We
12 simply assumed that staff was going to abandon
13 that position with respect to duct firing and
14 other topics in that supplemental filing.

15 So, I don't think -- even though we were
16 aware of it, I don't think it's fair to say that
17 we're not prejudiced because we had simply assumed
18 it was not going to be pursued.

19 PRESIDING MEMBER MOORE: We're going to
20 override the objection. We conclude that the
21 testimony was known as late as last year, and that
22 the submittal is, in this case, errata for or
23 clarification of existing testimony. So that's
24 going to be overridden, and we will allow the
25 testimony to go forward today.

1 Are there other items on housekeeping
2 before we start the hearings today?

3 Okay, the City.

4 MR. ELIE: Mr. Chairman, Steven Elie for
5 the City. I won't rehash what was in the motion,
6 but for purposes of the record wanted to reiterate
7 the City's position on moving forward with the
8 hearings today. And reiterate the objections that
9 we have in light of a) my partner, Mr. Groveman's,
10 unavailability; and b) the substantive issues we
11 raised, including piecemeal review; the impact of
12 the project description by the other portions of
13 the FSA; the agreement to lease in the joint
14 stipulation; Mr. Fuz's unavailability today.

15 The issues, with all due respect, I'm
16 not sure how that gets resolved, of your
17 appointment, sir, and I don't understand the whole
18 process. But I understand from the website that
19 your appointment ends on January 1, and I'm not
20 sure how that would impact these hearings, and
21 whether a new Presiding Officer would come in next
22 year at subsequent hearings.

23 And also just as a point of
24 clarification, I don't believe that we've received
25 exhibit 116, which is the errata to staff

1 assessment. And I looked on the website
2 yesterday; it wasn't there. And I don't know if
3 that's just an omission.

4 We've got it now.

5 (Laughter.)

6 HEARING OFFICER VALKOSKY: For
7 clarification, Ms. Holmes, was that filed
8 electronically or just by mail?

9 MS. HOLMES: I believe 116 was served by
10 mail, and exhibit 124 was also served
11 electronically as well as by mail.

12 PRESIDING MEMBER MOORE: Let me respond
13 to the City on a couple of those items. First,
14 your points in the petition are noted, and were
15 considered, I assure you, very seriously in at
16 least three meetings with my counsel before we
17 issued the filing that we did.

18 And so I'm aware of Mr. Fuz's position.
19 Frankly, his testimony would be important, but he,
20 in choosing to go to a League of California Cities
21 meeting over this, he's making a decision that he
22 has information on that I don't about the relative
23 importance. And he was well aware of the time
24 involved, and the commitment to his hearing. So,
25 under those circumstances all I can say is we all

1 make decisions that we're entitled to make, and
2 that we're going to live with the consequences of
3 later on.

4 With regard to my term, my term
5 officially ends on January 6, 2002. The Governor
6 of the State of California, who I work for in that
7 appointment, has the option to retain my services
8 for up to 90 days after my term ends. And that
9 determination, as far as conducting the
10 proceedings here, is left in his hands.

11 I am also served by a Second Member,
12 William Keese, of our Commission, who is in a
13 position to carry on after my term is ended,
14 should these hearings not be concluded. Although
15 I tell you it is my intention to take them as far
16 as I can, and if possible, to conclude the
17 evidentiary hearings and begin the construction of
18 the document prior to leaving office.

19 So, we're going to proceed on that
20 basis. If I fail to do that, Commissioner Keese,
21 who has access to all these hearing notes, the
22 tapes and the advice of his very able Aide, Terry
23 O'Brien, will be in a position both legally and
24 mechanically to take over and proceed with the
25 case should I not be able to finish it in time.

1 But your worries are noted. Obviously
2 I've been thinking about them, myself, from up
3 here. Think about them all the time.

4 MR. ELIE: Thank you, Mr. Chairman.
5 Just one point of clarification, Mr. Fuz is not at
6 the California League of Cities; that doesn't
7 start until tomorrow. He had another previously
8 scheduled out-of-city meeting that was scheduled
9 before your order was issued.

10 PRESIDING MEMBER MOORE: Thank you for
11 that correction. I appreciate that.

12 All right, other housekeeping items?
13 Applicant? Okay. So, what we're going to do is
14 go through these items, except where we've already
15 started to rearrange the topic area, and we'll
16 hear from the applicant, presentations whether by
17 declaration or by evidence. We'll then proceed to
18 staff -- we'll have cross-examination available in
19 each case; then to staff; and then to intervenors.

20 And at the end of each topic I'll
21 briefly open this up for public comment if there
22 is anyone interested who has information that they
23 want to make sure gets on the record for us to use
24 in terms of the decision.

25 And in order to make sure that the

1 record stream stays accurate and accessible, what
2 I'll do is ask you, if you do speak, to confine
3 your remarks specifically to the topic area that
4 we're considering. That way, as we organize the
5 data for writing the decision later on, we're not
6 cross-referencing all over through a lot of
7 testimony.

8 With that, let me open the topic of
9 reliability, and turn to the applicant, Mr.
10 Ellison.

11 MR. ELLISON: Commissioner, reliability
12 is a topic identified on your list as a possible
13 topic we can deal with by declaration. We do have
14 such a declaration, although I do not have copies
15 unfortunately. We would need to make copies for
16 the other parties.

17 We can do it that way, if you prefer; or
18 we have the witness here and we can deal with it
19 with a live witness, at your discretion.

20 PRESIDING MEMBER MOORE: Let me ask
21 staff, do you have problems with stipulating to
22 the declaration?

23 MS. HOLMES: No problems.

24 PRESIDING MEMBER MOORE: None. To the
25 City?

1 MR. SCHULTZ: No objection.

2 PRESIDING MEMBER MOORE: And to the
3 intervenor CAPE?

4 MS. CHURNEY: No objection.

5 PRESIDING MEMBER MOORE: No objections,
6 and we will enter it by declaration.

7 Let me turn then and ask, is there any
8 member of the public who would like to address us
9 on the question of reliability of the power plant?

10 MS. HOLMES: Could staff get their
11 testimony in, as well, before we take public
12 comment?

13 PRESIDING MEMBER MOORE: Oh, I'm sorry.

14 HEARING OFFICER VALKOSKY: Just for the
15 record I'd like the record to reflect that insofar
16 as applicant's testimony, we're referring to
17 exhibit 117, pages 7 to 8, is that correct, Mr.
18 Ellison?

19 MR. ELLISON: That is correct.

20 HEARING OFFICER VALKOSKY: And, Ms.
21 Holmes, before we turn to you, my understanding is
22 that we'll be dealing with exhibit 115, pages 4.4-
23 1 through 4.4-7, as well as the r,sum, submitted
24 as part of exhibit 116, is that correct?

25 MS. HOLMES: That's correct.

1 HEARING OFFICER VALKOSKY: Okay.

2 MR. ELLISON: Mr. Valkosky, just to make
3 the record crystal clear, pages 7 and 8 of exhibit
4 117 incorporate an include by reference a portion
5 of exhibit 4, and also include by reference
6 exhibit 23.

7 I'm sorry, I'm corrected, it's 22. And
8 so those exhibits would also be admitted into
9 evidence as part of power plant reliability.

10 HEARING OFFICER VALKOSKY: A portion of
11 exhibit 4.

12 MR. ELLISON: Specifically section 8.5
13 reliability.

14 HEARING OFFICER VALKOSKY: Right, and
15 are you talking about all of exhibit 22?

16 MR. ELLISON: I'm speaking of the
17 responses to the Energy Commission data requests
18 submitted on March 9, 2001, and specifically
19 request number 81.

20 HEARING OFFICER VALKOSKY: Thank you for
21 that clarification. So we're talking a portion of
22 exhibit 22.

23 With that, no objection to applicant's
24 offer? Those portions of those exhibits are
25 admitted.

1 PRESIDING MEMBER MOORE: I'm sorry, Ms.
2 Holmes, I jumped ahead. To staff.

3 MS. HOLMES: Well, I think Mr. Valkosky
4 has properly pointed out that staff had included
5 its power plant reliability testimony in exhibit
6 115. I would note that however the testimony was
7 written by Dr. Rastegar and Richard Minetto, Mr.
8 Baker has prepared and included a declaration in
9 exhibit 116 saying that he would sponsor the
10 testimony.

11 So those portions of exhibit 115 and 116
12 we would ask be entered into the record at this
13 time.

14 PRESIDING MEMBER MOORE: Any objection
15 to that? Applicant?

16 MR. ELLISON: No objection.

17 PRESIDING MEMBER MOORE: And objection
18 of the City? Objections, other -- from CAPE?

19 MS. CHURNEY: We have no objection. We
20 do have cross-examination for him, but we can
21 reserve that until later.

22 PRESIDING MEMBER MOORE: All right.
23 Well, then if there -- go ahead.

24 MS. HOLMES: I think if there's going to
25 be cross-examination on the topic of reliability

1 I'd like to handle it now.

2 PRESIDING MEMBER MOORE: Good. And your
3 witness is --

4 MS. HOLMES: Mr. Steve Baker.

5 PRESIDING MEMBER MOORE: Mr. Baker,
6 would you --

7 MS. CHURNEY: It does not -- our cross-
8 examination does not involve the issue of
9 reliability.

10 PRESIDING MEMBER MOORE: Oh, I'm sorry,
11 I misunderstood. This is the reliability topic.
12 If you have a cross-examination of Mr. Baker we'll
13 get his testimony on record. I understood that
14 there was going to be no objection to taking the
15 staff testimony by declaration on this topic.

16 MS. CHURNEY: We'll reserve it till
17 later.

18 PRESIDING MEMBER MOORE: So you do not
19 have cross-examination on the reliability topic?

20 MS. CHURNEY: Correct.

21 PRESIDING MEMBER MOORE: All right, then
22 we will take it by declaration.

23 And now I'll go back to where I was
24 before -- well, let me ask is there -- I do not
25 have any for CAPE, so you're not down for a

1 witness.

2 Is there anyone in the public who would
3 like to testify on reliability? All right, with
4 that I'm going to close the topic. And we'll go
5 on to geology and paleontology. For the
6 applicant.

7 MR. ELLISON: Again, we have discussed
8 doing this topic by declaration, as well. The
9 applicant's testimony is divided actually into
10 geologic hazards and resources, and then
11 separately paleontological resources. So I will
12 discuss them separately.

13 Geologic hazards and resources is pages
14 9 through 16 of exhibit 117. Paleontological
15 resources is pages 17 through 22. Incorporated by
16 reference within the geologic hazards portion of
17 the testimony are the identified portions of
18 exhibit 4 of the AFC. Exhibit 22 specifically
19 responds to this 57 through 59. Exhibit 51 and
20 exhibit 79.

21 For paleontology, the identified
22 portions of the AFC exhibit 4 and exhibit 51.

23 With respect to both of these topics we
24 do have minor proposed changes to the conditions
25 of certification which are identified in the

1 testimony. And so staff will have to, with
2 respect to whether these are susceptible to
3 declaration, staff will have to tell you whether
4 those are acceptable to staff or not, as well as
5 the other parties.

6 But subject to those caveats, we would
7 propose to admit the exhibits that I just
8 identified into evidence by declaration.

9 PRESIDING MEMBER MOORE: Objections?

10 MS. HOLMES: No objections, although I
11 would note that staff has a witness available to
12 respond to the applicant's proposed changes.

13 PRESIDING MEMBER MOORE: All right.
14 City?

15 MR. SCHULTZ: No objections from the
16 City.

17 PRESIDING MEMBER MOORE: And from the
18 intervenors?

19 MS. CHURNEY: No objections.

20 PRESIDING MEMBER MOORE: All right.
21 We'll take that, and turn to staff. Ms. Holmes.

22 MS. HOLMES: Thank you. Staff's geology
23 and paleontology section was included in exhibit
24 115, pages 4.2-1. And in addition there was the
25 FSA also contained a declaration and statement of

1 qualifications for Mr. Neil Mace.

2 As a result of the fact that Duke has
3 proposed some changes, Mr. Baker has agreed to
4 sponsor Mr. Mace's testimony and respond to the
5 changes. So it would probably be appropriate to
6 call him at this time.

7 PRESIDING MEMBER MOORE: All right.
8 Let's do that. Mr. Baker, you haven't been sworn,
9 so let me ask you to stand and be sworn.
10 Whereupon,

11 STEVE BAKER
12 was called as a witness herein, and after first
13 having been duly sworn, was examined and testified
14 as follows:

15 PRESIDING MEMBER MOORE: And, Mr. Baker,
16 if you'll take that seat up there and identify
17 yourself for the record, and your background.

18 MR. BAKER: My name is Steve Baker and
19 I'm not an electronic engineer, I'm a mechanical
20 engineer. I supervise the facility design group
21 of the engineering office of the Facility Siting
22 Division of the California Energy Commission.

23 PRESIDING MEMBER MOORE: Thank you. Ms.
24 Holmes.

25 //

1 DIRECT EXAMINATION

2 BY MS. HOLMES:

3 Q Mr. Baker, have you reviewed the geology
4 and paleontology section of the FSA which has been
5 identified as exhibit 115?

6 A Briefly I have.

7 Q Thank you. Was a statement of your
8 qualifications included in exhibit 115?

9 A I believe it was.

10 Q Are you familiar with the proposed
11 changes that Duke is referring to with respect to
12 geology and paleontology?

13 Yes, you can refresh your recollection.

14 (Pause.)

15 BY MS. HOLMES:

16 Q Is your recollection refreshed?

17 A Yes, it is.

18 Q Thank you. Do you have a response to
19 those proposed changes?

20 A We have no objection to the specific
21 changes requested.

22 MS. HOLMES: Thank you very much.

23 HEARING OFFICER VALKOSKY: Excuse me,
24 Mr. Baker. For clarity, is that for both the
25 geological and the paleontological portions?

1 MR. BAKER: Yes, sir.

2 HEARING OFFICER VALKOSKY: Thank you.

3 PRESIDING MEMBER MOORE: Thank you. Are
4 there questions for --

5 MR. SCHULTZ: No questions from the
6 City.

7 PRESIDING MEMBER MOORE: From the
8 intervenors?

9 MS. CHURNEY: No questions.

10 PRESIDING MEMBER MOORE: All right, Mr.
11 Baker, thank you very much. Stan.

12 HEARING OFFICER VALKOSKY: Yes, thank
13 you. Mr. Ellison, regarding your exhibit 79, I
14 take it you intended to move the entire exhibit?
15 I'm just clarifying. That was a response to data
16 request for geotechnical investigation.

17 MR. ELLISON: I believe that's the case,
18 but let me have our staff check that and I'll
19 report back to you.

20 HEARING OFFICER VALKOSKY: Okay, and
21 while your staff is checking, I note from the
22 exhibit list we're missing the date of that. If
23 you could provide me that, too. Thank you.

24 PRESIDING MEMBER MOORE: All right, any
25 public comment on the topics of geology and

1 paleontology?

2 Right, seeing none we'll proceed then
3 with facility design. Mr. Ellison, you have
4 witnesses for this topic?

5 MR. ELLISON: Yes, we do. I understand
6 that CAPE has five minutes of cross-examination
7 for this witness, so we will call Mr. Russell
8 Poquette on facility design.

9 PRESIDING MEMBER MOORE: Mr. Poquette,
10 if you'd come up. I'd like you to be sworn in,
11 and then give us your background for the record.
12 Whereupon,

13 RUSSELL POQUETTE
14 was called as a witness herein, and after first
15 having been duly sworn, was examined and testified
16 as follows:

17 MR. POQUETTE: Good morning; my name is
18 Russ Poquette. I am Project Director working for
19 Duke Fluor Daniel, and Project Director for Morro
20 Bay.

21 I have over 27 years experience in the
22 engineering and construction business; and a
23 mechanical engineer by degree.

24 PRESIDING MEMBER MOORE: Mr. Ellison.

25 MR. ELLISON: Has the witness been

1 sworn?

2 PRESIDING MEMBER MOORE: Yes, he was.

3 MR. ELLISON: All right.

4 DIRECT EXAMINATION

5 BY MR. ELLISON:

6 Q Mr. Poquette, do you have before you the
7 facility design portion of exhibit 117,
8 specifically pages 2 and subsequently?

9 A Yes, I do.

10 Q Was this testimony prepared by you or at
11 your direction?

12 A By me.

13 Q Do you have any additions, corrections
14 or changes that you'd like to make to that
15 testimony?

16 A Not at this time.

17 Q Is the testimony true and correct to the
18 best of your knowledge?

19 A Yes, it is.

20 Q And are the opinions therein your own?

21 A Yes.

22 MR. ELLISON: For the record, facility
23 design includes identified portions of the AFC,
24 exhibit 4, set forth on page 3 of the testimony.

25 And I would move the admission of that

1 portion of exhibit 117 and the documents
2 incorporated by reference therein.

3 PRESIDING MEMBER MOORE: Any objections?

4 MS. HOLMES: None from staff.

5 MR. SCHULTZ: None from the City.

6 PRESIDING MEMBER MOORE: The
7 intervenors? CAPE?

8 CROSS-EXAMINATION

9 BY MS. CHURNEY:

10 Q Mr. Poquette, the FSA and --

11 PRESIDING MEMBER MOORE: Wait, are you
12 objecting -- we're moving that evidence into the
13 record.

14 MS. CHURNEY: I'm sorry, I'm sorry.

15 PRESIDING MEMBER MOORE: Do you have
16 objections to that?

17 MS. CHURNEY: No.

18 PRESIDING MEMBER MOORE: Thank you.

19 DIRECT EXAMINATION - Resumed

20 BY MR. ELLISON:

21 Q And, Mr. Poquette, have you reviewed the
22 facility design portion of the staff's final staff
23 assessment?

24 A Yes, I have.

25 Q And do you agree with the conclusions

1 and the conditions of certification set forth
2 therein?

3 A Yes, I concur.

4 Q Have you also reviewed what is
5 identified as exhibit 124, which is the errata to
6 the staff's final staff assessment?

7 A Yes, I have.

8 Q And do you agree with the conclusions
9 set forth therein?

10 A Yes.

11 Q And specifically with respect to duct
12 firing, there has been some confusion in the
13 record as to the amount of megawatts the duct
14 firing would increase the capacity of the
15 facility. Is the number that's used in exhibit
16 124 for the megawatt increase from duct firing, in
17 your opinion, reasonable?

18 A It's a reasonable number if you
19 understand one basic premise, and that is the duct
20 firing will vary in the actual megawatts based on
21 the given ambient conditions at the time it's
22 utilized.

23 Q With that understanding, however, for
24 the purposes of this proceeding and the
25 Commission's decision, is the number used in

1 exhibit 124 a reasonable number?

2 A Yes.

3 Q Could you briefly summarize your
4 testimony on facility design?

5 A Okay. Basically the essence of the
6 testimony dealt with a brief discussion of how we
7 arrived at the design capacity of 1200 megawatts,
8 starting at the original thought process of 1500,
9 and the corresponding benefits by reducing it to
10 1200 in both emissions and sea water consumption,
11 et cetera.

12 Further went into some discussion and
13 have subsequently attached a number of slides to
14 the testimony that deal with the various site
15 constraints and design challenges that we have as
16 a result of available land space.

17 Talked about the design criteria in
18 terms of the life of the plant, itself. And then
19 ultimately moved into a review of the CEQA
20 baseline, which is the plant as it exists today.
21 A review of the FSA and concurrence with the
22 staff's findings and we believe that there will be
23 no significant impacts.

24 And lastly, that staff's assessment that
25 when all these compliance requirements are

1 implemented and the design completed, that we'll
2 be in compliance with LORS.

3 PRESIDING MEMBER MOORE: Further
4 questions, Mr. Ellison?

5 MR. ELLISON: No further questions. Mr.
6 Poquette is available for examination.

7 PRESIDING MEMBER MOORE: I have one
8 question, and that is with regard to derating the
9 plant from the original 1500 to 1200. Does that
10 allow for that capacity to still be utilized at
11 some point in the future in an emergency?

12 MR. POQUETTE: The current design is a
13 nominal 1200 megawatts. There would have to be
14 other design changes implemented to be
15 significantly higher than that number at a later
16 date.

17 PRESIDING MEMBER MOORE: Thank you. Mr.
18 Valkosky.

19 HEARING OFFICER VALKOSKY: Thank you.
20 Again, for clarification, am I to understand that
21 applicant is no longer proposing the changes to
22 various facility design conditions that it
23 reflected in its December 4th filing, specifically
24 the changes to structural, mechanical and
25 electrical engineering conditions?

1 MR. POQUETTE: I believe those were
2 clarifications as to definition if my memory is
3 correct.

4 HEARING OFFICER VALKOSKY: I think we
5 have a difference, because to me -- and, Mr.
6 Ellison, again maybe you'd want to clarify this --
7 it seems to me that you're looking for
8 modifications to the words of the conditions of
9 certification, is that correct, Mr. Ellison? At
10 least to my reading that's what it says.

11 MR. ELLISON: We have no proposed any
12 changes to the conditions of certification in our
13 testimony. We believe with the staff's errata and
14 the clarifications that we've obtained from staff
15 that they are not necessary.

16 I will confirm that. But that is my
17 understanding. And if there's any change to that
18 I will let you know this afternoon.

19 HEARING OFFICER VALKOSKY: Okay, but as
20 it stands there are no proposed changes to the
21 facility design conditions?

22 MR. ELLISON: That's my understanding.

23 HEARING OFFICER VALKOSKY: Thank you.

24 PRESIDING MEMBER MOORE: Thank you. Mr.
25 Poquette is available. Staff, cross-examination?

1 MS. HOLMES: No cross-examination.

2 PRESIDING MEMBER MOORE: The City?

3 MR. SCHULTZ: No cross-examination.

4 PRESIDING MEMBER MOORE: The intervenors
5 CAPE?

6 MS. CHURNEY: Yes, thank you.

7 CROSS-EXAMINATION

8 BY MS. CHURNEY:

9 Q Mr. Poquette, in the project description
10 section of the final staff assessment at page 3-1,
11 you might wish to refer to it, it indicates that
12 the new plant's actual generating capacity will
13 differ from and likely exceed the nominal net 1200
14 megawatt rating. Is this true? And, if so, by
15 how much can it exceed that 1200 megawatts?

16 A I need you to clarify something. What I
17 have in terms of the final staff assessment for
18 facility design is section 4. You referred to a
19 3?

20 Q Right. This is the project description.

21 A I believe that was being covered in
22 other testimony.

23 PRESIDING MEMBER MOORE: Yes, actually
24 it is being covered in --

25 MS. CHURNEY: I understand that, but

1 this goes specifically to reliability.

2 PRESIDING MEMBER MOORE: All right,
3 well, let's --

4 MS. CHURNEY: Or rather, facility
5 design.

6 PRESIDING MEMBER MOORE: -- well, let's
7 rephrase the question. Actually you've reasked
8 the question that I asked. So, let's see if we
9 can ask Mr. Poquette to reanswer it, and then
10 let's see if we can all pay attention through
11 these hearings and keep from repeating the
12 questions.

13 Mr. Poquette, will you address the
14 question of how much capacity is available above
15 the nominal 1200 at any given time per the
16 original design issue, which was 1500?

17 MS. CHURNEY: No, no, that isn't the
18 question. What the FSA indicates is that the
19 project can exceed the nominal net rating of 1200
20 megawatts. The project, as currently designed.

21 PRESIDING MEMBER MOORE: And that is the
22 question that I asked. And Mr. Poquette answered
23 it in terms of -- well, I'll let him reanswer it
24 in terms of what that capacity is. Mr. Poquette.

25 MR. POQUETTE: Okay. When you design a

1 plant with a nominal number it is not a fixed
2 number meaning it would not be 1142 megawatts, nor
3 is it designed at 1219 megawatts or any precise
4 number.

5 The varied basis in this case sets the
6 design parameter for pieces of equipment, and then
7 the corresponding ambient conditions, be it either
8 in the fired or unfired case, will adjust the
9 number of megawatts on a given day.

10 PRESIDING MEMBER MOORE: How high could
11 it go, then?

12 MR. POQUETTE: I don't know the absolute
13 number at this moment. But in response to your
14 question earlier, 1500, it could not reach the
15 1500. We are very much limited in that respect.

16 PRESIDING MEMBER MOORE: And could it
17 run for an extended period of time at a rating
18 higher than 1200, given the mechanical support
19 that you have designed for the project as
20 configured today?

21 MR. POQUETTE: You'd have two elements
22 there; not only the physical design of the
23 equipment, but you'd also have to have a
24 continuing set of ambient conditions that would
25 support that, particularly cooler air.

1 PRESIDING MEMBER MOORE: In other words,
2 you can't --

3 MR. POQUETTE: Not for any extended
4 period of time because you won't have the ambient
5 conditions.

6 PRESIDING MEMBER MOORE: Counsel.
7 BY MS. CHURNEY:

8 Q My follow-up question is was this taken
9 into account in all assessments of the
10 environmental impacts from a facility design point
11 of view, this ability to run beyond the 1200
12 megawatt rating?

13 MR. ELLISON: Let me object to that
14 question to the degree that it calls for Mr.
15 Poquette to address analysis outside of facility
16 design. He is not the correct witness to address
17 that question to.

18 MS. CHURNEY: No, this isn't facility
19 design question.

20 MR. ELLISON: But your question said,
21 was this accounted for in all environmental
22 reviews.

23 MS. CHURNEY: And I'm sorry, I'll
24 clarify. In environmental reviews dealing with
25 facility design.

1 PRESIDING MEMBER MOORE: Mr. Ellison,
2 which witness do you think would more properly be
3 in a position to answer that?

4 MR. ELLISON: Well, it depends on what
5 CAPE's concern is. I mean if, for example, you
6 know, CAPE is asking Mr. Poquette did the noise
7 analysis account for the project under certain
8 ambient air temperature conditions running at more
9 than 1200 megawatts, then that question should be
10 addressed to the noise witness.

11 PRESIDING MEMBER MOORE: Let me try this
12 a little bit different way, then.

13 Mr. Poquette, in your analysis did you
14 provide any operating description of the plant in
15 some peaking capacity use or something which would
16 be an intermittent or unusual condition use, and
17 for how long that might take place? Did you
18 supply information like that to any of the other
19 consultants?

20 MR. POQUETTE: Not to my recollection at
21 the moment. That would have been done at a lower
22 level of detail design, and we would certainly
23 have to do some research to respond more
24 specifically.

25 PRESIDING MEMBER MOORE: So your

1 analysis anticipated some reasonable range of
2 operations that surround a plant that is nominally
3 rated at 1200?

4 MR. POQUETTE: That's correct.

5 PRESIDING MEMBER MOORE: All right.

6 Other questions, counsel?

7 BY MS. CHURNEY:

8 Q Mr. Poquette, you note that the plant
9 has been designed on the basis of a 30-year life,
10 but the actual operable lifespan of the plant may
11 well be beyond that, up to 100 years, is that
12 correct?

13 A You've implied an assumption in there,
14 and so I can't respond directly to that. So, if
15 you'd like me to clarify, I can do that, but
16 you've made an assumption that the plant would be
17 there for 100 years.

18 Q No, actually -- in your testimony you
19 refer to the fact that other plants have lasted
20 that long, and so the suggestion, at least, I
21 think, from your testimony is that this plant
22 could last that long. If that's incorrect, I
23 would be happy to hear from you what the
24 correct -- your assumption is in your estimate.

25 MR. ELLISON: For the convenience of the

1 witness could you direct his attention to the
2 portion of the testimony that you're referring to?

3 MS. CHURNEY: Okay, it's on page 5 of
4 his submittal. And it's the first incomplete
5 paragraph.

6 MR. POQUETTE: You're referring to where
7 it starts out: The plant is stated to be designed
8 on the basis of a 30-year life?

9 MS. CHURNEY: Right, that's the complete
10 paragraph. But then it goes on to the second page
11 where --

12 MR. POQUETTE: Correct.

13 MS. CHURNEY: -- it states that however
14 virtually all facilities in the United States are
15 older than that, with some having been in
16 operation in excess of 100 years.

17 MR. POQUETTE: My reference there, and
18 to elaborate, is as stated in the testimony in the
19 design of any facility, especially long-term
20 facilities, you have to pick a life. And that
21 life is for the purposes of several things.

22 One being equipment selection; material
23 selection; codes; corrosion allowances; and
24 ultimately a financial model. Historically in the
25 industry of long-term facilities, which encompass

1 not only power plants, but refineries and other
2 facilities, that range of life is anywhere from 20
3 to 30 years. Depending on, you know, the specific
4 plant and/or technology that you're dealing with.

5 Similarly, while that is the baseline in
6 the beginning, the reference was that was in no
7 way to intend that this plant has a finite life of
8 30 years or 25 years, as many long-term
9 facilities, such as the existing plant, are
10 maintained, overhauled, equipment and materials
11 replaced, and so on.

12 BY MS. CHURNEY:

13 Q Well, given that, what is your best
14 estimate of the operating life of this plant, the
15 proposed plant?

16 A Well, that calls for some technical
17 speculation into the future as to where technology
18 will go. One could assume that it could easily go
19 at least 30 years that were designed, and beyond,
20 until such time we know what the new technology
21 may look like. Power plants of this nature may go
22 away; no one knows.

23 Q Well, you're suggesting that as new
24 technology arises it would be applied to the new
25 plant, is that correct?

1 A Well, much as you see in the existing
2 plant today, we have upgraded a number of the
3 facilities from its original design. Yes.

4 Q And what would be your best estimate of
5 the operating life of the existing plant, assuming
6 maintenance as you've described, and replacement
7 of equipment or materials, as necessary?

8 A Well, I think if you saw in the
9 testimony it said that there are current
10 modifications that have been made that will take
11 this plant, particularly, I believe, units 3 and
12 4, to at least 2018. And clearly there are a
13 number of maintenance and equipment projections as
14 to what will be done in the future.

15 And eventually you could replace
16 equipment there and go through a repowering step.
17 So, it's really, in essence, indefinite.

18 Q What is the significance of the year
19 2018?

20 A No different than I think the projection
21 on what changes you have been implemented to where
22 additional changes would have to be required at
23 that point.

24 Q There was no particular reason that you
25 selected that date?

1 A None that I am aware of in the details
2 specifically. It's just our projection of what
3 the changes would result in life.

4 Q It's possible, or will be possible to
5 run the new plant as now designed, but without
6 ever using duct firing, isn't that correct?

7 A Duct firing is not something, as even as
8 is stated in the permit, to be run on a continuous
9 basis. So it is possible to run the plant without
10 duct firing.

11 Q So duct firing could be removed from the
12 design and you'd have a fully functional 1032
13 megawatt plant from a facility design standpoint?

14 A Technically that could be done.

15 MS. CHURNEY: And if I could show this
16 to the witness. May I approach?

17 PRESIDING MEMBER MOORE: Sure. Do you
18 have copies of that, whatever you're going to show
19 him?

20 MS. CHURNEY: Unfortunately I don't.
21 And I'll identify it. It's from the application
22 for certification, it's figure 5-3. It's called
23 alternative new units building structures.

24 PRESIDING MEMBER MOORE: AFC figure 5-3?

25 MS. CHURNEY: Right.

1 PRESIDING MEMBER MOORE: All right.

2 MS. CHURNEY: And I believe it's page 5-
3 19.

4 PRESIDING MEMBER MOORE: Do you want to
5 identify, Mr. Poquette, what you're looking at?

6 MR. POQUETTE: This is a set of three
7 photographs. They're entitled alternative new
8 units building structure, figure 5-3, that deals
9 with no enclosure, partial enclosure and full
10 enclosure.

11 PRESIDING MEMBER MOORE: And you're
12 familiar with those photographs?

13 MR. POQUETTE: Yes.

14 PRESIDING MEMBER MOORE: You've seen
15 them before?

16 MR. POQUETTE: I have reviewed these in
17 the past.

18 PRESIDING MEMBER MOORE: All right.
19 Counsel, your question?

20 BY MS. CHURNEY:

21 Q The question is based on this drawing,
22 this schematic, it's possible to design the new
23 plant with all the industrial looking portions of
24 it fully enclosed, isn't that correct?

25 MR. ELLISON: Let me ask for a

1 clarification of the question. Are you asking is
2 it possible to design a generic plant this way?
3 Or are you asking is it possible to design the
4 Morro Bay plant this way?

5 MS. CHURNEY: I'm referring to the Morro
6 Bay plant.

7 MR. POQUETTE: As the plant is currently
8 configured there is a tremendous amount of work
9 that would have to go into making that complete
10 assessment. But it is feasible, at least in
11 theory. We don't know what the ramifications of
12 the changes that would occur in doing that.

13 BY MS. CHURNEY:

14 Q And how would a fully enclosed new plant
15 compare to the existing plant in terms of height?

16 MR. ELLISON: You know, at this point,
17 we are going to be presenting, pursuant to the
18 Committee's order, an analysis of enclosure of the
19 facility as part of visual resources. That is
20 going to go into exactly these issues.

21 And so I would object to the questions
22 as being facility design questions, and suggest
23 that this topic be handled under visual pursuant
24 to the Committee's direction in presenting that
25 analysis.

1 PRESIDING MEMBER MOORE: Well, Mr.
2 Ellison, I'm going to support that to the extent
3 that this discussion about enclosure will take
4 place in a design hearing. So we'll get more into
5 that.

6 But to the extent that the question
7 asked implies that there's an issue of the actual
8 functional relationship of the plant to any of
9 those design changes, is there anything about the
10 proposed enclosure that interrupts or makes
11 infeasible the actual operation of the facility?

12 MR. POQUETTE: As the plant is currently
13 configured in the design we would have to go
14 through an extensive analysis that has not been
15 done to date for full enclosure, that is in line
16 with what Mr. Ellison just indicated we are
17 preparing.

18 So there are considerations as relates
19 to available plot space, access, and so on, in
20 terms of maintenance and operations that have not
21 been fully assessed.

22 To add to that I guess you could say we
23 would probably end up looking at a different
24 configuration if, in fact, the plant were to be
25 fully enclosed, than what we have at the moment.

1 PRESIDING MEMBER MOORE: All right.
2 Counsel, other questions?

3 BY MS. CHURNEY:

4 Q If that's the case then on what basis
5 was that AFC exhibit prepared?

6 PRESIDING MEMBER MOORE: I'm sorry, can
7 you ask that question again?

8 MS. CHURNEY: Sure. He has indicated
9 that it's really difficult, I guess, for him to
10 testify with specificity what changes would have
11 to occur in order to fully enclose the plant at
12 this point.

13 If that's the case, if it's so
14 uncertain, how was it that that document was
15 prepared some time ago, and included in the AFC,
16 and is showing full enclosure as a potential
17 option.

18 MR. POQUETTE: At the time that this was
19 prepared, it was at a level of detail that I
20 believe is in line with CEQA, which does not
21 require the same detailed analysis that it does
22 for the basecase.

23 And therefore, there was an attempt made
24 to give a perspective of what partial enclosures
25 and full enclosures would look like without going

1 through the detailed design and analysis.

2 Is it viable? Yes. There are plants
3 that we have built fully enclosed in other parts
4 of the country. This particular arrangement,
5 because it is an alternative, has not been done to
6 that level.

7 Q Would the stacks have to be taller if
8 the new plant were entirely enclosed?

9 A Yes.

10 Q From a design standpoint?

11 A Yes. That I can tell you for sure.

12 Q By how much?

13 A Depends on the total height, but you can
14 take the top of the facility, and as a rule of
15 thumb, multiply by 1.5.

16 As an example, if the building were 200
17 feet tall, the stacks would have to be 300 feet.

18 Q And why is that, from a facility design
19 standpoint? Why is that so?

20 A Why is what so?

21 Q That if you fully enclose a facility the
22 stack heights necessarily increase.

23 A That's an environmental issue that I'm
24 not qualified to address. That would have to be
25 done by Mr. Rubenstein.

1 Q Well, if that's the case, how do you
2 know with such precision precisely how much the
3 stacks would have to be increased?

4 A Well, as I said, it's a rule of thumb
5 that was provided by Mr. Rubenstein.

6 MR. ELLISON: Mr. Rubenstein is the
7 applicant's air quality witness. The primary
8 reason that the stack height changes is in order
9 to comply with downwash requirements of air
10 quality laws.

11 If you wish you can raise that issue
12 with Mr. Rubenstein and he can give you a more
13 precise answer. Mr. Poquette is speaking as just
14 sort of a general rule of facility design, and not
15 to a specific answer under California air quality
16 rules.

17 MS. CHURNEY: So, I will take that to
18 mean that it is not a facility design issue as far
19 as necessity to raise the stack heights.

20 MR. ELLISON: The specific stack height,
21 as it's true for a couple of these issues, there's
22 an interaction here between air quality rules and
23 facility design. The specific stack height is a
24 good example of that. I think you'll find that
25 you'll get a more precise answer from Mr.

1 Rubenstein.

2 Again, I would say, however, that
3 primarily this is a visual issue. And the
4 Committee order has asked us to do an analysis.
5 We are in that process of doing a feasibility and
6 impacts analysis of fully enclosing the facility,
7 and we would again suggest that this topic be
8 dealt with under visual with the understanding
9 that if you want to inquire as to the specific
10 stack height issue under air quality, we think
11 that would also be appropriate.

12 If necessary, we can bring Mr. Poquette
13 back as part of the visual testimony to talk about
14 any facility design aspects of it.

15 MS. CHURNEY: That's fine.

16 BY MS. CHURNEY:

17 Q Mr. Poquette, as the designer engineer
18 for the new plant I assume that you're very
19 familiar with the specifications for the GE Frame
20 7 model PG 7241 gas turbine that is being proposed
21 for the new plant?

22 A No, I'm not specifically an expert in
23 those areas of the technical design.

24 Q And who is the expert on the technical
25 design?

1 A We would have appropriate design
2 engineer brought as additional witness.

3 Q And will he be testifying today?

4 MR. ELLISON: Well, why don't you either
5 ask your question or tell us -- when you say
6 specifications, perhaps Mr. Poquette knows what
7 you mean, I do not. So if you could let us know
8 what exactly you mean by that or what you're
9 after --

10 PRESIDING MEMBER MOORE: Actually,
11 neither do I. I'm not sure what your question
12 was.

13 MR. ELLISON: It may be that Mr.
14 Poquette is the appropriate witness to answer the
15 question.

16 MS. CHURNEY: Well, let me ask the next
17 question and maybe we'll see.

18 BY MS. CHURNEY:

19 Q What does the manufacturer or vendor of
20 those turbines specify is the maximum PM10
21 emissions from the turbines? Do you know that?

22 PRESIDING MEMBER MOORE: No, no, no --

23 MR. ELLISON: That's air quality.

24 PRESIDING MEMBER MOORE: -- let's make
25 it clear that we've divided this up pretty

1 carefully, and where we've got air quality
2 questions that are clearly air quality, let's try
3 and hold that. Those are going to be very
4 extensive hearings and a lot of witnesses.

5 So let's try and confine this to the
6 actual design, itself, the structural design.

7 MS. CHURNEY: Well, actually these are
8 questions going to the structural design and
9 guarantee of those turbines. So, --

10 PRESIDING MEMBER MOORE: That question
11 is going to come up in air quality, so --

12 MS. CHURNEY: Well, as long as you
13 represent -- or the applicant represents that the
14 air quality expert will be qualified to testify
15 about the design and specifications of these
16 turbines.

17 PRESIDING MEMBER MOORE: Well, Mr.
18 Poquette just told you that he is not qualified to
19 testify as far as a GE turbine, and so that
20 question wasn't going to go anywhere with this
21 witness anyway.

22 MS. CHURNEY: I understand that,
23 Commissioner, but --

24 HEARING OFFICER VALKOSKY: Excuse me.
25 Mr. Ellison, will such a witness be available

1 during the air quality presentation?

2 MR. ELLISON: Well, certainly we will
3 have a witness that will be capable of responding
4 to the emissions from the turbines, which is the
5 last question posed.

6 Now, if --

7 HEARING OFFICER VALKOSKY: Okay.

8 MR. ELLISON: -- if CAPE has additional
9 questions, I can't tell you who they should be
10 directed to until I know what they are, but --

11 HEARING OFFICER VALKOSKY: No, that's as
12 far as we are right now.

13 MR. ELLISON: Yeah, the question of
14 emissions from the turbines --

15 HEARING OFFICER VALKOSKY: Right.

16 MR. ELLISON: -- is an air quality
17 question.

18 HEARING OFFICER VALKOSKY: Okay.

19 MS. CHURNEY: Okay. I guess the
20 question, though, goes beyond that, and that is
21 the design of the turbines and the specifications
22 and guarantee related to those turbines. Would
23 your air quality expert be qualified to testify on
24 those matters?

25 MR. ELLISON: Are you interested in

1 inquiring as to whether the turbine can, in fact,
2 meet the emissions specified for it because of its
3 design, is that what you're getting at?

4 MS. CHURNEY: That's one of the
5 questions I'd have, yes.

6 MR. ELLISON: Well, first of all I think
7 that is an air quality issue and it's
8 appropriately addressed in air quality.

9 I will say that there's both a design
10 answer and a contractual answer to that. But it's
11 an air quality issue, it's not something that
12 would be dealt with under facility design.

13 HEARING OFFICER VALKOSKY: Okay, and you
14 will have a witness during the air quality portion
15 of the hearing to respond to questions of that
16 nature, those specific questions, is that correct?

17 MR. ELLISON: Well, let me be clear, you
18 know, we typically rely -- we purchase the
19 turbines from a vendor. And we rely upon the
20 contractual assurances regarding the performance
21 of that equipment that are given by the vendor.

22 HEARING OFFICER VALKOSKY: Okay, and
23 will you have a witness that is familiar with the
24 warranty and the contractual --

25 MR. ELLISON: Yes, we will.

1 HEARING OFFICER VALKOSKY: --

2 guarantees?

3 MR. ELLISON: Yes, we will.

4 HEARING OFFICER VALKOSKY: Thank you.

5 Anything further from the intervenor?

6 MS. CHURNEY: Yes.

7 BY MS. CHURNEY:

8 Q Comparing the new plant as designed with
9 the existing plant, Mr. Poquette, isn't it correct
10 that the new plant will have both lower exhaust
11 velocity and lower exhaust temperature than the
12 existing plant?

13 A With relation to stacks or --

14 Q Yes, I'm sorry, yes, emissions from the
15 stacks.

16 A I don't recall the specific numbers, I'd
17 have to actually look those up.

18 PRESIDING MEMBER MOORE: In relational
19 sense, are they lower and slower?

20 MR. POQUETTE: I'll be honest, I just
21 don't recall at the moment.

22 MR. ELLISON: Again, I think, if I know
23 where you're going here, I think these are air
24 quality questions.

25 PRESIDING MEMBER MOORE: Well, we

1 actually heard some testimony in an earlier
2 meeting that we had that went to this and so there
3 is a filing on it. If Mr. Poquette is not the
4 person to answer this question, I'll make note of
5 it. But we'll make sure it comes up and gets
6 answered again at a later time.

7 BY MS. CHURNEY:

8 Q And because the facility design was
9 completed some time ago, Mr. Poquette, is it safe
10 to assume that the design did not take into
11 account the increased risk of terrorism acts in
12 the United States today?

13 MR. ELLISON: Objection, assumes there's
14 an increased risk.

15 MS. CHURNEY: Well, I think ==

16 HEARING OFFICER VALKOSKY: Sustained.
17 Ma'am, for the record, I'd like to note that
18 originally this topic was designated as one that
19 was going to be taken by declaration in a
20 supplemental prehearing conference statement Dr.
21 Groot asked for the courtesy of about five minutes
22 of cross-examination on facility design.

23 So, I'd urge you to conclude as quickly
24 as possible.

25 MS. CHURNEY: Well, I appreciate that,

1 and I was brought into these proceedings rather
2 late in the game, and I'm attempting to make this
3 as briefly as possible.

4 But with respect to that question I
5 think it does go to facility design. And I think
6 the public is entitled to know what, if anything,
7 has been done with respect to the facility design
8 to address concerns --

9 PRESIDING MEMBER MOORE: Let me rephrase
10 the question. And I'm going to ask the witness in
11 answering it, to not give anything specific,
12 because as counsel is well aware, this is not the
13 kind of topic that you want published information
14 out. And if we're going to have anything, it will
15 be in some confidential record.

16 Let me ask if the design engineers have
17 taken into account the issue of possible terrorist
18 or some antagonistic move and have provided for
19 security in their design of the system?

20 MR. POQUETTE: Nothing specific.

21 PRESIDING MEMBER MOORE: So right now
22 the question of a specific terrorist attack has
23 not been incorporated into the facility design
24 beyond what you might normally do in order to make
25 the facility safe.

1 BY MS. CHURNEY:

2 Q Are there design measures that can be
3 taken to help camouflage the obvious nature of the
4 plant, such as complete enclosure of the ammonia
5 or gasoline/diesel fuel tanks proposed?

6 MR. ELLISON: I'm sorry, could you
7 clarify that question? Are you asking --

8 PRESIDING MEMBER MOORE: Asking the
9 security question around for walls or enclosures
10 around ammonia and other support facilities.

11 MR. ELLISON: I'm focused on the word
12 camouflaged. Is your question to the witness can
13 you hide that this is a power plant? Is that what
14 you're asking?

15 MS. CHURNEY: Well, hide the more
16 obvious aspects of the power plant. Particularly
17 fuel tanks, ammonia tanks that could be targets.

18 MR. ELLISON: Do you understand the
19 question, Mr. Poquette?

20 MR. POQUETTE: Yes, yes.

21 MR. ELLISON: Okay.

22 MR. POQUETTE: There are a number of
23 things that can be done; again, have not been
24 considered to date. But you also have to take
25 into consideration other design aspects such as

1 appropriate venting, safety and other hazards from
2 an operational and maintenance standpoint, as
3 well. There are a lot of things that could be
4 considered.

5 MS. CHURNEY: Thank you.

6 PRESIDING MEMBER MOORE: Other
7 questions? All right, redirect, Mr. Ellison.

8 REDIRECT EXAMINATION

9 BY MR. ELLISON:

10 Q Mr. Poquette, you were asked some
11 questions about the life of the existing plant.
12 And you testified to a date of approximately 2018.
13 Do you recall those questions?

14 A Yes.

15 Q In answering those questions and giving
16 that date, were you assuming that at the end of
17 the life of the existing plant that it would be
18 replaced or repowered by some other power
19 facility, as opposed to being torn down?

20 A The assumption would be that this would
21 continue and not just be demolished and torn down.

22 Q And if you knew that the only
23 alternative to operation of the existing plant was
24 to tear it out and not replace it, would your
25 answer be different and longer to the question

1 what is the existing life?

2 A Yes.

3 Q With respect to the questions that were
4 posed regarding duct firing, you testified that it
5 is possible to design a fully functional power
6 plant without duct firing, do you recall that?

7 A Yes.

8 Q When you speak of a fully functional
9 plant you are speaking of a fully functional
10 baseload plant as opposed to one with peaking
11 capability?

12 A Yes. Baseload only.

13 Q Is it possible to design a fully
14 functional plant, meaning a plant that also has
15 peaking capability without using duct firing?

16 A No.

17 Q A moment ago you were asked some
18 questions about terrorism and security issues and
19 whether the facility had been designed with those
20 in mind.

21 Are there standard features of the
22 plant, itself, such as fencing around the plant,
23 gates, that sort of thing, that are ordinarily
24 used at any power plant and would be used here, as
25 well?

1 A Yes.

2 Q So in that sense is it fair to say that
3 the plant would be designed to provide adequate
4 security?

5 A Yes.

6 MR. ELLISON: Thank you, that's all I
7 have.

8 PRESIDING MEMBER MOORE: Staff, recross?
9 City, recross? And intervenors, CAPE, do you have
10 recross-examination?

11 MS. CHURNEY: Yes.

12 RECROSS-EXAMINATION

13 BY MS. CHURNEY:

14 Q With respect to your answer on the
15 estimated lifetime of the plant, it would increase
16 if the plant wasn't torn out. You indicated that
17 it would be longer. How much longer?

18 A It would be an indefinite period.

19 Q You can't put a number on it more than
20 an indefinite period?

21 A Well, at some point the equipment would
22 have to be replaced in a repowering mode, at which
23 time it's been deemed that it's no longer in a
24 maintenance mode or partial replacement you go on
25 repower.

1 Q Okay. Do you know when approximately
2 the equipment would have to be replaced?

3 A No, I don't.

4 Q Are you familiar with the FERC's
5 September 14, 2001 policy statement that notes
6 that electric companies may need to install new
7 facilities to further safeguard their electric
8 power transmission grid and gas pipeline systems?

9 MR. ELLISON: Are you referring to the
10 order that was included in CAPE's testimony?

11 MS. CHURNEY: Correct.

12 MR. ELLISON: Do you have a copy of it
13 that you could provide to the witness?

14 (Pause.)

15 MR. ELLISON: And could you direct his
16 attention to the specific language that you're
17 referring to?

18 MR. POQUETTE: Okay.

19 MS. CHURNEY: Just let me know when
20 you're done reading it.

21 (Pause.)

22 MR. POQUETTE: Okay.

23 BY MS. CHURNEY:

24 Q Has that analysis been made with respect
25 to the plant's design with respect to this

1 project?

2 A Not since this has come out, no.

3 MS. CHURNEY: No further questions.

4 PRESIDING MEMBER MOORE: Thank you. Is
5 there any public testimony on the question of
6 facility design, anyone who'd like to offer
7 comments specific to that topic?

8 All right. Oh, I'm sorry, once again I
9 jumped right past --

10 MS. HOLMES: I hope that means there
11 won't be any questions for us.

12 PRESIDING MEMBER MOORE: Excuse me, I'll
13 get that right. Ms. Holmes, let me turn to staff
14 and ask --

15 MS. HOLMES: Thank you. Staff's
16 facility design testimony was filed in exhibit 15.
17 It's entitled facility design testimony of Brian
18 Payne. It begins on page 4.1-1. Mr. Payne's
19 qualifications and his declaration were included
20 both in the FSA and in exhibit 116.

21 I should perhaps take this opportunity
22 to point out that apparently the FSA that was
23 filed in November, some FSAs had differing sets of
24 qualifications and declarations than others. So
25 we simply refiled them all in exhibit 116. So in

1 many cases the declarations and qualifications are
2 found in both documents.

3 At any rate, I don't know if there's
4 cross-examination desired. If not, I would
5 request that the facility design testimony of
6 staff comes in via the declaration.

7 If, however, there are questions that
8 somebody wishes to ask, Mr. Steve Baker, who
9 supervised the preparation of the facility design
10 testimony, is available here to answer cross
11 questions on this --

12 PRESIDING MEMBER MOORE: Well, let me
13 ask if there are any objections to accepting Mr.
14 Baker's testimony by declaration?

15 MS. HOLMES: Mr. Payne's testimony,
16 excuse me.

17 PRESIDING MEMBER MOORE: I'm sorry.

18 MR. ELLISON: No.

19 PRESIDING MEMBER MOORE: From the
20 applicant, no? The City?

21 MR. SCHULTZ: No objections by the City.

22 PRESIDING MEMBER MOORE: No.

23 MS. CHURNEY: No.

24 PRESIDING MEMBER MOORE: All right. So
25 we're --

1 MS. HOLMES: Thank you.

2 PRESIDING MEMBER MOORE: That took us
3 back out. All right. Then now I will reask the
4 question formally. Is there anyone in the public
5 who'd like to testify on this topic?

6 Seeing none, let's move to the
7 efficiency area. Mr. Poquette, you can probably
8 just stay put. I think you'll be back.

9 And ask the applicant for your
10 testimony. Mr. Ellison.

11 DIRECT EXAMINATION

12 BY MR. ELLISON:

13 Q Mr. Poquette, do you have before you the
14 power plant efficiency portion of exhibit 117
15 commencing on page 71?

16 A Yes, I do.

17 Q And was this testimony prepared by you
18 or at your direction?

19 A By me.

20 Q Do you have any additions or corrections
21 that you'd like to make to it?

22 A None.

23 Q Is the testimony true and correct to the
24 best of your knowledge?

25 A Yes.

1 Q And are the opinions contained therein
2 your own?

3 A Yes.

4 MR. ELLISON: At this point I would move
5 the admission of that portion of exhibit 17, as
6 well as the exhibits incorporated by reference
7 therein, which are section 8.6 of the AFC, which
8 is exhibit 4, and response numbers 55 through 56
9 of the February 9th data responses which are
10 exhibit 22.

11 HEARING OFFICER VALKOSKY: Mr. Ellison,
12 you meant exhibit 117, right? I think you said
13 exhibit 17.

14 MR. ELLISON: If I did, I stand
15 corrected, yes. Exhibit 117.

16 PRESIDING MEMBER MOORE: Any objections?

17 MS. CHURNEY: I'm sorry, could I have
18 the exhibit numbers again?

19 PRESIDING MEMBER MOORE: 117, partial,
20 4, and 22, as I recorded it. Partial 22.

21 Objections from staff? None. City?

22 MR. SCHULTZ: No objection.

23 PRESIDING MEMBER MOORE: No objections.

24 And from CAPE?

25 MS. CHURNEY: None.

1 PRESIDING MEMBER MOORE: No. So,
2 admitted.

3 All right, Mr. Ellison.

4 BY MR. ELLISON:

5 Q Mr. Poquette, have you reviewed the
6 final staff assessment with regard to power plant
7 efficiency?

8 A Yes.

9 Q And do you concur with the conditions of
10 certification and the conclusions therein?

11 A Yes.

12 Q Have you also reviewed the errata filed
13 by the staff, exhibit 124, in this proceeding with
14 regard to efficiency?

15 A Yes.

16 Q And do you concur with the statements
17 therein?

18 A Yes.

19 Q The efficiency portion of the staff
20 errata has a figure for steam turbine capacity.
21 Have you looked at that?

22 A Yes, I have.

23 Q And do you have any comments regarding
24 that?

25 A Yes, went back and looked at the actual

1 cases that it is referenced from, and it appears
2 to be a misapplication of -- pulled the total
3 number for the entire power plant rather than for
4 the individual steam turbine. So the number's
5 actually in half instead of -- let's see, instead
6 of the 530, I believe it's 265 or 275 out of the
7 cases.

8 Q Could you briefly summarize your
9 testimony with regard to efficiency?

10 A Yes. This is actually even briefer than
11 the previous. And, again, there's the testimony
12 discussed the decision to go from 1500 to a 1200
13 megawatt optimized plant. And a review of the
14 equipment, itself, and the basis for selection.

15 And ultimately a review of staff's FSA
16 and findings and concluding that we're in
17 concurrence with that.

18 MR. ELLISON: No further questions.

19 PRESIDING MEMBER MOORE: Thank you.

20 Staff.

21 MS. HOLMES: No cross-examination.

22 PRESIDING MEMBER MOORE: City?

23 MR. SCHULTZ: No questions.

24 PRESIDING MEMBER MOORE: CAPE?

25 MS. CHURNEY: Yes.

1 CROSS-EXAMINATION

2 BY MS. CHURNEY:

3 Q Mr. Poquette, on page 71 of your
4 testimony you again discuss the fact that Duke had
5 initially considered a 1500 megawatt plant before
6 deciding on a 1200 megawatt new plant.

7 And in connection with that you state:
8 A peaker facility would have to be constructed at
9 another site that most likely would not have the
10 same proximity to existing infrastructure of once-
11 through ocean water cooling, which is one of the
12 most significant contributors to the efficiency of
13 the Morro Bay Power Plant.

14 Do you see that?

15 A Yes.

16 Q Doesn't this statement specifically
17 assume that another peaker facility would have to
18 be constructed at another site if duct firing and
19 this additional 168 megawatts of added capacity
20 are eliminated here?

21 A That isn't an effort to compare and
22 apples-and-apples comparison.

23 Q Was that assumption made?

24 A Yes.

25 Q And what is the basis for that

1 assumption?

2 A The basis for the assumption is that the
3 project description is a 1200 megawatt plant that
4 has the built-in flexibility to respond to peak
5 demand through duct firing. If you maintain the
6 project description at 1200 megawatts, but reduce
7 the capacity to the baseload case only you would
8 have to supplement that elsewhere with a peaker
9 for again a apples-to-apples comparison.

10 Q Well, that assumes that you've made the
11 assumption that a peaker is necessary somewhere,
12 is that correct?

13 A No. The assumption I'm making is to
14 maintain a comparison of the efficiency of duct
15 firing in this basecase, that being a 1200
16 megawatt plant, and how that would be affected by
17 having it dealt with this peaker elsewhere.

18 Q Are you aware that recently the
19 California Governor has halted all negotiations
20 for an additional 30 peaker facilities in
21 California because there was a determination made
22 that there was no need for them, and that the
23 state's priorities were for a more environmentally
24 friendly non consumptive energy production and
25 conservation program instead of peaker facilities?

1 MR. ELLISON: Objection on two bases.

2 One, --

3 PRESIDING MEMBER MOORE: Yeah, --

4 MR. ELLISON: -- she's testifying --

5 PRESIDING MEMBER MOORE: -- you don't
6 have to. I'm sorry. What's your next question,
7 counsel?

8 MS. CHURNEY: Okay. I'd like to at this
9 point move to strike the testimony in Mr.
10 Poquette's written submittal, specifically that
11 which states a peaker facility would have to be
12 constructed at another site, that most likely
13 would not have the same proximity to existing
14 infrastructure of once-through cooling ocean water
15 which is one of the most significant contributors
16 to the efficiency of the Morro Bay Power Plant as
17 speculative and conclusory.

18 HEARING OFFICER VALKOSKY: Your
19 response, Mr. Ellison?

20 MR. ELLISON: Well, we object to the
21 motion to strike obviously. The testimony simply
22 discusses an issue raised by CAPE about the value
23 of peaking capacity, specifically duct firing, for
24 this power plant.

25 I would make two points with respect to

1 what is being raised here. First, need in the
2 classic, you know, old utility structure sense has
3 been removed as an issue from power plant siting
4 cases by Senate Bill 110 of several years ago; in
5 light of the fact that all the economic risk of
6 building an unneeded facility is now borne by the
7 applicant. So need is not, in that sense, an
8 issue in this proceeding.

9 Secondly, with respect to the claim that
10 this is somehow speculative, I would simply say
11 it's not speculative at all. And Mr. Poquette has
12 testified to the fact that you do need peaking
13 resources in an electric system. And it is
14 something that facilities traditionally include in
15 these kinds of proceedings. So, I don't think
16 there's anything speculative about that.

17 PRESIDING MEMBER MOORE: Staff,
18 response?

19 MS. HOLMES: Staff's going to stay out
20 of this one.

21 (Laughter.)

22 PRESIDING MEMBER MOORE: No, I'm not
23 going to strike the testimony. I think I'll be
24 able to use that testimony in frame of reference I
25 take it as a comparative value that has value in

1 terms of our examination.

2 Certainly every one of the plants that
3 we've been dealing with elsewhere in the
4 Commission is compared against their ability to
5 provide peaking power in an emergency. And the
6 ISO has used plants in that capacity in the past.

7 So, I'm going to allow the testimony to
8 stay in. Your next question, counsel.

9 BY MS. CHURNEY:

10 Q Well, assuming then that at least as
11 you've described it, an apples-to-apples
12 comparison, that an assumption was made that there
13 wouldn't have to be another peaker facility
14 constructed at another site, if the peaker
15 capacity were not included with this project, why
16 don't the Moss Landing units include duct firing
17 if there's a need for that?

18 PRESIDING MEMBER MOORE: Well, Moss
19 Landing -- Mr. Poquette, were you involved in Moss
20 Landing?

21 MR. POQUETTE: No, I was not.

22 PRESIDING MEMBER MOORE: All right.
23 While I'm not sure that it's relevant, it's an
24 entirely different plant. Same owner, but a
25 different plant. So I'm going to instruct the

1 witness not to deal with that.

2 MS. CHURNEY: Are you familiar with the
3 Moss Landing project?

4 PRESIDING MEMBER MOORE: Intimately.
5 But the witness is not.

6 MR. POQUETTE: Am I?

7 BY MS. CHURNEY:

8 Q Yes, are you?

9 A I'm aware of it.

10 MS. CHURNEY: I'm sorry, I was directing
11 the question to the witness.

12 PRESIDING MEMBER MOORE: Oh, I thought
13 you were directing it at me.

14 (Laughter.)

15 MS. CHURNEY: I know you are.

16 PRESIDING MEMBER MOORE: Since I sat on
17 the case, I figured I was probably qualified to
18 answer that one.

19 (Laughter.)

20 BY MS. CHURNEY:

21 Q I'm sorry, Mr. Poquette, what was your
22 answer?

23 A Yes, I am aware of the project.

24 Q And you're aware that it also uses once-
25 through ocean cooling?

1 A Yes.

2 Q So, given the similarities why is it
3 that there is a presumed need for duct firing with
4 respect to this project here in Morro Bay, but not
5 with respect to Moss Landing?

6 A Well, I think based on the earlier
7 statement that would call for really some, as you
8 indicated, speculation on my part. Each plant
9 stands on its own economics and I would have to
10 ask others to respond that were involved in the
11 economic analysis.

12 Q So it is a matter of economics; your
13 understanding is it's a matter of economics?

14 A No, that's one of the factors that goes
15 into it.

16 Q What are the other factors?

17 A There are factors, everything from gas
18 availability, other facilities that exist which is
19 already there in comparison to the plant here that
20 would be removed at a later date.

21 Q Would there be any need to rewrite the
22 Morro Bay-Templeton 230 kV line if duct firing
23 were eliminated from the new plant --

24 MR. ELLISON: I'm going to object.
25 That's a transmission question.

1 PRESIDING MEMBER MOORE: That will come
2 in, that will be a little bit later today. So if
3 you can hold that question, that will come back up
4 later in today's testimony.

5 BY MS. CHURNEY:

6 Q In connection with efficiency, your
7 efficiency analysis, have you considered the
8 amount of water reduction or reduced once-through
9 cooling which would result if duct firing were
10 eliminated from the proposed plant design?

11 A No.

12 Q If there is continued path 15 congestion
13 could Duke be restricted from generating the 168
14 megawatts resulting from the duct firing?

15 PRESIDING MEMBER MOORE: I think that's
16 also going to come up during the transmission
17 section.

18 MS. CHURNEY: Okay, we'll defer those
19 questions until then.

20 BY MS. CHURNEY:

21 Q Is there any direct correlation between
22 the California system's needs for electricity and
23 the use of duct firing by Duke, or will Duke
24 simply maximize its duct firing used to maximize
25 profits even when system's needs are not otherwise

1 fully used?

2 MR. ELLISON: Objection. Argumentative.

3 Assumes facts not in evidence and --

4 PRESIDING MEMBER MOORE: Yeah, I

5 don't -- I'm going to stick with the efficiency

6 question -- is there any, Mr. Poquette, out of

7 that question is there any relationship to the

8 needs of the ISO and duct firing that you're aware

9 of?

10 MR. POQUETTE: Not that I'm aware of.

11 It's not my area of expertise.

12 BY MS. CHURNEY:

13 Q In Duke's response to the Coastal

14 Alliance's data request number 290 Duke stated,

15 the project, including all the commitments related

16 to it, is not economically feasible without the

17 supplementary duct firing, and Duke will not build

18 it, if permitted, without this lawful and safe

19 capability.

20 Are you aware of that statement made by

21 Duke?

22 A I don't recall reading that, myself, no.

23 Q So do you have any knowledge of facts

24 provided to staff or the public supporting this

25 conclusion?

1 A Again, I was not involved in the
2 preparation of that particular aspect.

3 Q Duke's response to the Coastal
4 Alliance's data request number 297 says there must
5 be actual cost justification for bids that exceed
6 the price determined by a set formula, the proxy
7 price. So that in effect each generator must bid
8 the proxy price or cost justify any bids over that
9 price.

10 MR. ELLISON: Are you referring to bids
11 to the California ISO?

12 MS. CHURNEY: That's what I'm assuming
13 was referred to in their response to the data
14 request, yes.

15 MR. ELLISON: Okay, how does this relate
16 to power plant efficiency?

17 PRESIDING MEMBER MOORE: Well, she
18 hasn't asked the question --

19 MS. CHURNEY: Yeah, I'm not -- I'm
20 setting it up.

21 BY MS. CHURNEY:

22 Q Duke also indicates that in effect with
23 deregulation all of the more efficient, lower cost
24 producers earn more because the proxy price is set
25 based on the last least efficient producer's bid

1 that fills the market needs, is that correct? Is
2 that a correct understanding?

3 MR. ELLISON: Objection, this is not
4 related to power plant efficiency.

5 PRESIDING MEMBER MOORE: Yeah, that
6 isn't related to power plant efficiency. I'm not
7 sure where you're going with that, counsel. I
8 mean the bidding procedures at the ISO and the now
9 defunct PX are a matter for market design. What's
10 your question leading to?

11 MS. CHURNEY: Well, it does go to
12 efficiency in that the pricing will determine, you
13 know, the building of new, more efficient plants.
14 And if the contention is that Duke will not build
15 the plant if they do not get their way with
16 respect to duct firing, or if it's not included in
17 the plans for this plant, I think that does go to
18 efficiency.

19 PRESIDING MEMBER MOORE: Mr. Poquette,
20 is there any pricing relationship that you're
21 aware of that you've been asked to plan for in the
22 design of the facility? Were you asked to take
23 into account any market structure or market
24 response in terms of the design, itself?

25 MR. POQUETTE: Not in relation to our

1 design work.

2 PRESIDING MEMBER MOORE: Counsel, that's
3 as close as I can get to --

4 MS. CHURNEY: Okay.

5 PRESIDING MEMBER MOORE: -- getting an
6 answer on your question.

7 MS. CHURNEY: I have no other questions.

8 PRESIDING MEMBER MOORE: All right.
9 Staff? I'm sorry, I've gone past redirect. Mr.
10 Ellison, redirect.

11 MR. ELLISON: No questions, no redirect.

12 PRESIDING MEMBER MOORE: All right.
13 That does take us, then, to staff and to witness.

14 MS. HOLMES: Thank you. Staff's
15 efficiency testimony is found in --

16 PRESIDING MEMBER MOORE: Mr. Poquette,
17 thank you.

18 MS. HOLMES: Staff's efficiency
19 testimony is found in exhibit 115, beginning on
20 page 4.3-1. That testimony was written by Dr.
21 Rastegar and Richard Minetto. Mr. Baker, in
22 exhibit 116, indicated that he would be
23 responsible for that testimony. He has supervised
24 its preparation. His qualifications are included,
25 both in exhibit 116 and I believe in exhibit 124.

1 Exhibit 124 also contains the supplemental
2 testimony that was the subject of the motion
3 earlier.

4 So, at this point, Mr. Baker, I believe
5 you have already been sworn?

6 MR. BAKER: Yes, I have.

7 MS. HOLMES: Thank you.

8 DIRECT EXAMINATION

9 BY MS. HOLMES:

10 Q Mr. Baker, are you familiar with the
11 power plant efficiency testimony contained in the
12 FSA, exhibit 115?

13 A Yes, I am.

14 Q And are you familiar with the testimony
15 contained in exhibit 124 entitled supplemental
16 testimony on power plant efficiency?

17 A Yes.

18 Q Was that testimony prepared by you or
19 under your direction?

20 A Yes.

21 Q Are the facts contained in that
22 testimony true and correct?

23 A Yes, they are, with certain minor errors
24 in the efficiency portion that we were reminded of
25 a few moments ago.

1 Q Did the opinions contained in that
2 testimony represent your best professional
3 judgment?

4 A Yes, they do.

5 Q And is the statement of qualifications
6 included in the FSA and exhibit 24 yours and
7 correct and accurate?

8 A Yes.

9 Q Do you have any corrections to make to
10 your testimony at this time?

11 A No, I don't.

12 MS. HOLMES: With that we'll make the
13 witness available for cross-examination.

14 PRESIDING MEMBER MOORE: Thank you.
15 Applicant.

16 MR. ELLISON: No questions.

17 PRESIDING MEMBER MOORE: Thank you. For
18 the City?

19 MR. SCHULTZ: No questions.

20 PRESIDING MEMBER MOORE: Thank you. For
21 the intervenors, questions of Mr. Baker?

22 MS. CHURNEY: Yes.

23 CROSS-EXAMINATION

24 BY MS. CHURNEY:

25 Q Mr. Baker, let me direct you to a

1 statement in the FSA on page 4.3-3, which
2 indicates the natural gas systems proposed to be
3 used offer access to far more gas than the plant
4 would require. It is therefore highly unlikely
5 that the Morro Bay Power project would pose a
6 substantial increase in demand for natural gas in
7 California. Do you see that?

8 A Yes.

9 Q Does staff's determination in this
10 regard consider all other proposed power plants
11 that would use the same line?

12 A Yes.

13 Q In the cumulative impact section, page
14 4.3-6 staff indicates it knows of no other
15 projects that could result in cumulative energy
16 impacts. Were Moss Landing and other power plants
17 not yet operating considered?

18 A Yes, they were considered.

19 Q So your statement in cumulative impacts
20 that staff knows of no other projects that could
21 result in cumulative energy impacts is incorrect?

22 A My understanding is that even though
23 there are other power plant projects in California
24 operating, in construction, in permitting and in
25 the feasibility design stages, that none of them

1 that we are aware of will create impacts, adverse
2 impacts in conjunction with the Morro Bay project.

3 Q Did staff consider the statement in the
4 AFC at section 8.5.12 on page 8-33 where Duke
5 notes California's natural gas resource base is
6 expected to satisfy current production levels for
7 the next 60 years?

8 MS. HOLMES: Could I ask that they
9 provide a copy of that --

10 MS. CHURNEY: Sure.

11 MS. HOLMES: -- statement to Mr. Baker?

12 PRESIDING MEMBER MOORE: I'm assuming
13 that they will make a copy of that available, what
14 counsel's referencing. Although she did quote --

15 MS. HOLMES: The witness doesn't have
16 the AFC with him.

17 PRESIDING MEMBER MOORE: Okay.

18 (Pause.)

19 PRESIDING MEMBER MOORE: I believe that
20 statement's based on the gas report, natural gas
21 report that was done by the Commission.

22 MS. HOLMES: It would be helpful to see
23 the statement in context so that we can confirm
24 that.

25 MS. CHURNEY: We'll get it.

1 PRESIDING MEMBER MOORE: Do you want to
2 make that available to Mr. Baker and let him look
3 at it, and then reask the question, please.

4 Mr. Baker, you've read the statement --

5 MR. BAKER: Yes, sir.

6 PRESIDING MEMBER MOORE: -- in the
7 report? Counsel, would you like to rephrase
8 your --

9 BY MS. CHURNEY:

10 Q Yeah, was that statement considered in
11 your analysis?

12 A Yes, it was.

13 Q Was any increase in electrical or other
14 consumptive uses of natural gas taken into account
15 in production over this period?

16 A I don't understand what you're asking
17 me.

18 Q Well, the AFC refers to current
19 production levels. And I was wondering whether
20 you took into account production over a longer --
21 beyond current production levels.

22 A Certainly.

23 Q There's no mention of that in the FSA.

24 MS. HOLMES: Is she asking the witness a
25 question?

1 BY MS. CHURNEY:

2 Q Well, what is the operational lifetime
3 of the new plant that was assumed in making that
4 analysis?

5 A I recall from earlier testimony that we
6 were talking about a 30-year life; however, that's
7 not particularly significant in light of the fact
8 that natural gas supplies are projected to be
9 adequate for many more years into the future.

10 Q But you assumed in your analysis a 30-
11 year life, is that correct?

12 A Yes, but the conclusions reached in my
13 efficiency testimony are not dependent upon the
14 power plant being turned off after 30 years. The
15 natural gas supply system in North America is, at
16 the moment, deregulated; has been for some time,
17 and probably will be for some time into the
18 future.

19 And what this means is that market
20 forces will see that natural gas is available to
21 those who are willing to pay for it.

22 We've seen nothing in the past, the
23 recent past, the present or in our forecast to
24 think that that's going to change. The testimony
25 concludes that there should be adequate supplies

1 of natural gas for this project, and I see no
2 reason to change that conclusion.

3 Q Let me direct you to a statement in the
4 FSA on page 4.3-4. The Morro Bay Power project
5 includes HRSG duct burners partially to replace
6 heat to the ST, that's the steam turbine, cycle
7 during high ambient temperatures when CT,
8 combustion turbine, capacity drops partially as
9 added power.

10 Do you see that?

11 A Yes.

12 Q What is the approximate percentage for
13 each of these uses? Did you do that calculation?

14 A I'm not sure what you're asking, but I
15 think the answer is no.

16 (Laughter.)

17 BY MS. CHURNEY:

18 Q Well, just so it's clear on the
19 record --

20 PRESIDING MEMBER MOORE: What is your
21 question, counsel? I --

22 MS. CHURNEY: Well, the question is that
23 it's indicated that the use of duct burners is
24 twofold. Partially to replace heat in the steam
25 turbine, and also to boost capacity.

1 BY MS. CHURNEY:

2 Q And I'm just trying to see whether you
3 made the calculation of how much is used for one
4 purpose and how much is used for the other.

5 A No. The analysis is based upon the
6 maximum capability of the plant, which will
7 probably be somewhere beyond 1200 megawatts. That
8 was the number that was assumed in all of our
9 analysis.

10 We're not saying that if there were 150
11 fewer megawatts generated than the gas supply
12 situation would be drastically changed, that's not
13 true.

14 Q How much duct firing is necessary to
15 provide the noted operational benefits such as
16 balancing and optimizing the operation of the
17 steam turbine cycle, if you know?

18 A I don't know that.

19 Q What is the factual basis for staff's
20 belief that page 4.3-4 and 4.3-5 that inclusion of
21 the HRSG duct burners, while less efficient than
22 overall operation of the combined cycle
23 technology, does provide additional benefit for
24 capacity and is more efficient than other
25 technology for providing energy during peak

1 conditions?

2 A I've done analysis on other projects
3 including some calculations that show that the
4 duct burner on a typical plant such as the Morro
5 Bay project is slightly more efficient than a
6 simple cycle gas turbine peaking plant in the 40
7 to 80 megawatt range.

8 A machine such as that would be the
9 alternative to duct burners on a project like
10 Morro Bay.

11 Understand that the electric grid system
12 is a living thing. One of the features of our
13 alternating current electric system is that the
14 power has to be generated at the exact moment it's
15 consumed.

16 Every time a refrigerator starts, every
17 time an air conditioner comes on, every time
18 somebody flicks the light switch, the system has
19 to provide a little bit more electricity.

20 Somewhere in the system at that very
21 same instant a power plant has to provide that
22 power. If someone turns out the lights, shuts off
23 the factor at the end of the day, all of a sudden
24 the system needs less power. Some power plant
25 somewhere has to, at that moment, produce less

1 power.

2 We've talked this morning about baseload
3 and peaking, but, you know, I think peaking may be
4 a little misnomer. Much of the flexibility that
5 we're talking about is commonly referred to as
6 load following. As the system operates the
7 dispatcher, in this case generally the Independent
8 System Operator, has to make sure that at every
9 instant in time the amount of power available at
10 the system, either from generating plants such as
11 Morro Bay, or from import lines from outside the
12 state, exactly matches the demand.

13 If that gets out of whack bad things can
14 happen. Televisions and computers can go "ffftt"
15 and motors can burn out, breakers open and leave
16 whole neighborhoods, even cities, without power
17 for hours and perhaps days.

18 So, it's absolutely critical to keep
19 power into the system balanced at every second
20 with power out.

21 If a significant number of the power
22 plants available to the dispatcher were baseload
23 plants, such as say a Morro Bay without duct
24 burners, the system would be extremely brittle.

25 One of the beauties of the technology of

1 the gas turbines in this power plant is they're
2 extremely clean air emissions characteristics.
3 Dry low NOx combustors are a marvel. They're just
4 amazing. Fifteen years ago nobody could have even
5 hoped to have this --

6 PRESIDING MEMBER MOORE: Mr. Baker,
7 let's stay with the question --

8 MR. BAKER: Sir, I'm real close to
9 closing this up. I'm sorry, can I just ask for
10 two more minutes of your time?

11 PRESIDING MEMBER MOORE: All right.

12 MR. BAKER: Thank you. One of the
13 features of these dry low NOx combustor equipped
14 gas turbines is they don't like to change their
15 output. They run cleanly only at full throttle.

16 And so it's impractical, it's impossible
17 to use them for any kind of load following. If
18 the dispatcher were confronted with a significant
19 number of power plants like that it would be very
20 difficult to make the system survive.

21 By putting in a little bit of duct
22 burning, as proposed here in this project, a
23 little bit of extra size in the steam turbine
24 generator, the plant all of a sudden has an amount
25 of flexibility that makes it worth much much more

1 to the dispatcher. It makes the system viable; it
2 makes it robust rather than brittle.

3 Taking duct burning away from a project
4 such as Morro Bay would be, from the dispatcher's
5 point of view, I think would be just
6 unconscionable.

7 BY MS. CHURNEY:

8 Q The system will survive without duct
9 burning at this proposed project, won't it?

10 A I'm sure the ISO would find some way to
11 make it survive, but there might be problems with
12 that. The ways that the ISO would go about
13 insuring that survivability could be worse than
14 duct burners at Morro Bay.

15 Q Aren't there an excess of peaker
16 facilities currently in the State of California?

17 MS. HOLMES: I'm going to object to that
18 question.

19 PRESIDING MEMBER MOORE: Yeah, it's
20 sustained.

21 BY MS. CHURNEY:

22 Q The additional benefit to capacity that
23 you're talking about, isn't that the 52.4 percent
24 versus 52.8 percent difference in efficiency? Is
25 that what you're talking about?

1 A Excuse me, where did those numbers come
2 from?

3 Q I believe it's in your supplemental
4 testimony.

5 PRESIDING MEMBER MOORE: And you want to
6 reask the question.

7 BY MS. CHURNEY:

8 Q Yeah. The additional benefit for
9 capacity that's referred to in the testimony, I'm
10 just trying to determine whether that additional
11 benefit is the difference between 52.8 and 52.4
12 percent efficiency.

13 A I haven't yet found the 52.4 figure.

14 Q I'm looking for it, myself. I'll point
15 you in the direction.

16 MS. HOLMES: Try page 4.

17 PRESIDING MEMBER MOORE: Page 4 of the
18 supplemental testimony?

19 MS. HOLMES: Yes.

20 MR. BAKER: The question again, please?

21 BY MS. CHURNEY:

22 Q Is that the additional benefit for
23 capacity that is referred to in the testimony?

24 A I'm sorry, capacity of what? I don't
25 understand where you're going with this.

1 Q Okay, the testimony, staff's testimony
2 is at page 4.3-4 and 4.3-5 of the original filing,
3 not the supplemental filing, but the original
4 filing. It says that inclusion of duct burners,
5 while less efficient than overall operation of the
6 combined cycle technology, does provide, quote,
7 additional benefit for capacity.

8 I'm just trying to pin down what that
9 means. What is that additional benefit for
10 capacity? Is it that difference between 52.4 and
11 52.8?

12 A In general, yes. There's a lot more to
13 it than just that number. But as far as what
14 you're trying to get at right now, I think the
15 answer is yes.

16 Q In connection with your testimony is
17 there an underlying assumption made by staff of
18 electricity needs in the future?

19 A I'm sorry, you went right past me with
20 that one.

21 Q Well, is there an underlying assumption
22 of additional need for peaker facilities?

23 MS. HOLMES: I'm going to object to that
24 question on the grounds that it goes beyond the
25 scope of his testimony.

1 PRESIDING MEMBER MOORE: Yeah, I think
2 I'm going to have to sustain that. I think that
3 that is beyond what this witness has testified on.

4 BY MS. CHURNEY:

5 Q Staff notes that the 7FA class gas
6 turbine to be used in the new plant represents
7 some of the most modern efficient machines now
8 available, and this is at page 4.3-5.

9 What, if any, turbines are more
10 efficient?

11 A Westinghouse is selling their 501G,
12 which is about less than 1 percentage point more
13 efficient on paper. What it would actually do on
14 the ground in this particular case, in this
15 location at this project I don't know.

16 General Electric has started to take
17 orders for their Frame 7H machine, which is yet
18 another percentage point more efficient than that.
19 Nobody has as yet run one of these, so no one's
20 quite sure if it will meet the expectations or
21 not.

22 Q Has staff considered requiring the use
23 of these new turbines to maximize overall fuel
24 efficiency?

25 A No. There would be no point in that.

1 Q And why is that?

2 A Because the machines proposed are, they
3 are the most efficient ones currently feasible for
4 a project such as this. Future machines, the
5 efficiency of those machines is speculative. When
6 they're actually on the ground and running,
7 dispatched in the system at different locations
8 around the state and the country and the world,
9 people can then see exactly how efficient they
10 are. Do they meet or exceed the manufacturers'
11 guarantees; compare them with the Frame 7F
12 machines and such.

13 Another thing to consider is that as
14 these 7F's age the manufacturer will most likely
15 offer upgrades. They have with previous models,
16 and they are surely expected to with this one,
17 also. Upgrades in the future that will make the
18 machine more efficient, and even perhaps cleaner
19 burning.

20 Q Well, with respect to unproven
21 technologies and the risks posed, staff goes on to
22 state at page 4.4-4 that indeed industry
23 experience with F class machines has raised
24 concerns of the premature wear or failure of high
25 temperature components that could offset thermal

1 efficiency savings.

2 MS. HOLMES: I'm going to have to lodge
3 an objection to that question on the grounds that
4 it's reliability testimony which I believe has
5 already been entered into the record.

6 MS. CHURNEY: Okay, well, the question
7 isn't asked yet.

8 BY MS. CHURNEY:

9 Q The question is doesn't the most high
10 temperature situation occur when duct firing is
11 used?

12 A Not at all. We're talking, the sentence
13 you just quoted has to do with the temperatures at
14 the inlet to the first turbine rotor wheel in the
15 gas turbine. That has nothing at all to do with
16 duct firing.

17 Q In dealing with efficiency of
18 alternatives in the FSA, page 4.3-5, staff notes
19 that the project objective is to be able to
20 compete on the spot market.

21 Are you familiar with the project
22 objectives as defined by the applicant in its
23 response to CEC data request number 24, which
24 includes significant improvement of the
25 environment?

1 A Can I have a moment to look at that --

2 Q Sure.

3 A -- and you provide me with it, please?

4 PRESIDING MEMBER MOORE: Well, let me
5 understand where your question is going.

6 MS. CHURNEY: Well, I'm just trying to
7 determine that staff has taken into account all of
8 the objectives as defined by the applicant in this
9 project. And to the extent that staff has only
10 taken into account some of the objectives, I think
11 perhaps the FSA is not complete.

12 PRESIDING MEMBER MOORE: With regard to
13 efficiency?

14 MS. CHURNEY: Correct.

15 PRESIDING MEMBER MOORE: Okay, well,
16 then show the witness that language and rephrase
17 the question and we'll see if he has an answer.

18 Which part of what you've just handed
19 Mr. Baker are you expecting him to read and
20 comment on?

21 (Pause.)

22 PRESIDING MEMBER MOORE: Mr. Baker, do
23 you want to identify what you're looking at?

24 MR. BAKER: This is a page from the
25 applicant's response to February 9, 2001 CEC data

1 request. The document is dated March 7, 2001, and
2 the page is headed alternatives.

3 The specific response that I was just
4 pointed toward is answer to a data request, letter
5 number 24, clearly state the project's objectives.

6 BY MS. CHURNEY:

7 Q And did you take into account in your
8 analysis all of those stated objectives?

9 A I did not take them into account in
10 efficiency. Some of them, yes. Others, I'm sure
11 were taken into account by other staff witnesses
12 in their sections of the FSA.

13 Q Do you know whether Duke can compete on
14 a spot market without any duct firing in this
15 project?

16 MS. HOLMES: I'm going to object to that
17 question.

18 PRESIDING MEMBER MOORE: Sustained.

19 MS. CHURNEY: In the FSA it's
20 specifically stated that the project objective is
21 to be able to compete on a spot market. Clearly
22 staff has, in its analysis of efficiency of
23 alternatives to the project, taken that into
24 account. And in fact, has drawn a conclusion.
25 And I think I'm entitled to know the basis for

1 that conclusion.

2 HEARING OFFICER VALKOSKY: Mr. Baker,
3 could you specify the project objectives you took
4 into account in preparing the efficiency
5 testimony?

6 MR. BAKER: Yes.

7 HEARING OFFICER VALKOSKY: Thank you.
8 Proceed.

9 MR. BAKER: You're right, the project is
10 proposed to, among other things, compete on the
11 spot market. And in order to do that it's going
12 to have to have a product to offer the dispatcher
13 that the dispatcher will want to buy.

14 In addition, it would have to offer it
15 at an affordable price, and I can't address that
16 issue. I believe only the applicant can address
17 price.

18 But as far as a marketable product a
19 power plant that offers some level of load
20 following or, as it's been called here, peaking,
21 although I think that we may be using the wrong
22 term -- a power plant that can offer some level of
23 load following is much more marketable than a
24 straight, rigid baseload power plant.

25 PRESIDING MEMBER MOORE: Mr. Baker, did

1 you take -- did any of your calculations or the
2 staff calculations take into account the question
3 of market efficiency in terms of being able to bid
4 in or out of an existing market?

5 MR. BAKER: No, sir.

6 PRESIDING MEMBER MOORE: All right.

7 BY MS. CHURNEY:

8 Q In your analysis did you draw any
9 conclusions as to whether Duke would be able to
10 compete on a spot market without duct firing?

11 A No.

12 Q Why is the alternative of no duct firing
13 not identified and discussed in this section by
14 staff?

15 A It's customary today to build power
16 plants such as this with some level of duct firing
17 capability. It's not common to see such a plant
18 without it.

19 You've mentioned the Moss Landing
20 project with no duct firing. That's an unusual
21 case. Most of the projects that people want to
22 build today, and with which they're expected to be
23 able to compete on the market include some duct
24 firing. Because, as I mentioned earlier, it makes
25 for a much more marketable product from the power

1 plant.

2 I saw no reason to look at an
3 alternative with no duct firing because from the
4 standpoint of efficiency it really has no real
5 meaning. When the system needs load following and
6 peaking capability, the dispatcher will have to
7 acquire it somewhere. And this power plant can
8 certainly provide it at least as efficiently as
9 any other source, if not moreso.

10 Q In staff's analysis did you make a
11 determination as to whether there would be
12 expected to be any continuing energy crisis in
13 California by the time the new plant comes online?

14 MS. HOLMES: I'm going to object to that
15 question on the grounds that it goes to the
16 reliability topic, which has already been
17 addressed.

18 PRESIDING MEMBER MOORE: You know, I
19 think Mr. Baker can fairly answer that. Did you
20 take that into account?

21 MR. BAKER: Let me just say that I would
22 not like to subscribe to any theories of an energy
23 crisis in California. And probably for that
24 reason I did not include any such factor in my
25 analysis.

1 BY MS. CHURNEY:

2 Q Under the cumulative impacts section,
3 this is at page 4.3-6, staff notes the high
4 efficiency of the proposed Morro Bay Power project
5 should allow it to compete very favorably, running
6 at a high capacity factor, therefore reducing the
7 cumulative amount of natural gas consumed for
8 power generation.

9 Would this likewise be the case without
10 duct firing?

11 A Any time the new project runs and
12 displaces older, less efficient plants, the
13 testimony is absolutely correct. Whether it does
14 that with or without duct firing, it's going to be
15 more efficient than what it replaces. If it
16 weren't then the economics of the market would not
17 be operating properly.

18 Q So the answer is yes?

19 A I guess so. That was a long question
20 and a long answer, so --

21 Q I'd like to ask you several questions
22 about staff's conclusions on page 4.3-6, if you
23 can get that in front of you. Where staff notes
24 overall fuel efficiency of 52.8 percent with duct
25 firing as proposed, compared to 55 percent without

1 duct firing for 1032 megawatts of power.

2 Staff then states, while duct firing is
3 not as efficient as the Morro Bay Power project
4 unfired base combined cycles, it represents a low
5 cost and very reliable source of peaking power at
6 an efficiency that is competitive with other
7 existing peaking units. Do you see that?

8 A Yes.

9 Q First, the AFC at page 8-18 notes that
10 the combined cycle plant at a baseload at the
11 average summer afternoon ambient temperature of
12 64.1 degrees without duct firing is approximately
13 49.7 percent.

14 How does that relate to the efficiency
15 figures used by staff?

16 A The efficiency figures in our testimony
17 are based on average annual ambient conditions.
18 Anytime the weather changes, temperature goes up
19 or down, air pressure goes up or down, humidity
20 changes, the power output and the efficiency of
21 the power plant are going to change.

22 We have to pick some number to use as a
23 baseline, and that's what we've done. The number
24 you quoted, I believe, is at an extreme condition.

25 Q Your reference to low cost refers to

1 Duke's cost to install and maintain duct firing,
2 is that correct?

3 A Low cost to install and to operate.

4 Q Does that cost take into account the
5 cost to human health as a result of the higher
6 PM10 emissions with duct firing?

7 MS. HOLMES: I'm going to object to that
8 question on the grounds that it goes to air
9 quality.

10 PRESIDING MEMBER MOORE: I'm going to
11 sustain that.

12 BY MS. CHURNEY:

13 Q You also talk about competition and that
14 it's competitive with other existing peaking
15 units. Is furthering the competitiveness of the
16 applicant an appropriate consideration for staff?

17 A It's an appropriate consideration in
18 doing the efficiency analysis.

19 Q Well, it isn't a goal of CEQA or staff's
20 analysis that the applicant maximize profits at
21 the expense of wasting energy, is it?

22 MS. HOLMES: I'm going to object to that
23 question. It's very argumentative --

24 PRESIDING MEMBER MOORE: Well, right,
25 that -- don't answer that, Mr. Baker.

1 MR. BAKER: Okay.

2 BY MS. CHURNEY:

3 Q Well, isn't it a goal of your -- of
4 staff that --

5 PRESIDING MEMBER MOORE: I think Mr.
6 Baker stated the goal of the staff. I don't think
7 we need to lead him into a political regime.

8 BY MS. CHURNEY:

9 Q Is there any information that staff has
10 that would demonstrate the project as a whole is
11 not profitable without duct firing?

12 MS. HOLMES: Again, I'm going to object
13 to that question. Mr. Baker has already talked
14 about the fact that his testimony does not go to
15 the profitability of this project for Duke, or the
16 costs for Duke.

17 PRESIDING MEMBER MOORE: Sustained.

18 MS. CHURNEY: Well, his testimony,
19 though, in the staff report specifically states
20 that, and he has reached the conclusion that, duct
21 firing represents a low-cost and reliable source
22 of peaking power that is competitive with other
23 existing peaking units. He's drawn that
24 conclusion.

25 PRESIDING MEMBER MOORE: He drew that,

1 as I understood, on a relative basis. I don't
2 think there's any question that he's going to be
3 able to answer about Duke's profitability or their
4 profit motives. He's simply not going to be in
5 possession of that information.

6 MS. CHURNEY: Could I get that answer
7 from him?

8 PRESIDING MEMBER MOORE: Mr. Baker.

9 MR. BAKER: Certainly. The mention in
10 the testimony of low cost is simply
11 acknowledgement that this power plant is going to
12 have to compete to sell its product into a
13 competitive market. If it's a low-cost producer,
14 it will have some chance of competing. If it's
15 not a low-cost producer, it probably isn't going
16 to be able to compete, and Duke probably would be
17 better advised spending their money elsewhere.

18 BY MS. CHURNEY:

19 Q Are you familiar with the Moss Landing
20 project?

21 A Somewhat.

22 Q Did you participate in that siting?

23 A Oh, yes.

24 Q Are the Moss Landing units without duct
25 firing expected to be profitable?

1 A That's up to Duke. You'll have to ask
2 them.

3 Q In staff's investigation, or through
4 materials supplied to staff by Duke, is there any
5 factual evidence produced for the statement
6 regarding the economic and feasibility of the
7 project without duct firing?

8 MS. HOLMES: Could you please refer
9 specifically to what statement you're referring?
10 I'm afraid I've lost where you are. Are you still
11 on the supplemental testimony, or are you on the
12 AFC?

13 BY MS. CHURNEY:

14 Q Okay. Are you familiar with Duke's
15 response to the Coastal Alliance's data request
16 number 290?

17 A I don't believe I've seen it.

18 PRESIDING MEMBER MOORE: Mr. Baker, do
19 you want to indicate what you've just been handed?

20 MR. BAKER: This is Duke's responses to
21 April 23, 2001 CAPE data requests. It's dated May
22 25, 2001. The page is headed air quality/project
23 description/engineering, data request 290. Please
24 confirm that duct firing is not a necessary part
25 of the combined cycle combustion, i.e., that

1 combined cycle technology can operate without any
2 duct firing.

3 PRESIDING MEMBER MOORE: And your
4 question, counsel?

5 BY MS. CHURNEY:

6 Q Did staff consider this, the response of
7 Duke, to that question in its conclusions on
8 efficiency?

9 A I don't believe this information was
10 available at the time, but it is consistent with
11 my understanding of this type of machine in
12 general. And there's nothing here that would
13 cause me to reevaluate my analysis or my
14 conclusions.

15 Q Do you agree with Duke's indication in
16 that response that regarding the economic
17 infeasibility of the project without duct burning?

18 MS. HOLMES: Again, I'm going to
19 register the same objection. These are questions
20 that can be appropriately addressed to Duke's
21 witness who prepared this data response if they
22 choose to introduce it into evidence at the time
23 Mr. Baker's not testifying about cost
24 effectiveness for Duke for this individual
25 project.

1 PRESIDING MEMBER MOORE: Sustained.

2 BY MS. CHURNEY:

3 Q Referring to the staff assessment on
4 page 4.3-6 it states, and because duct firing will
5 need to compete on the spot market against other
6 units when it is operating it will be the most
7 efficient peaking unit supplying Cal-ISO. Do you
8 see that?

9 A Yes.

10 Q Are you saying here in other words that
11 other peaker facilities are less efficient than
12 the 52.8 percent referenced by staff earlier?

13 A There's nothing available to the ISO
14 currently or within the timeframe of this project
15 that I'm aware of that would be more efficient.

16 Q What other peaker facilities did you
17 take into account when you drew that conclusion?

18 A At the Energy Commission I deal with
19 every project that comes in the door. So anytime
20 someone proposes a thermal power plant of 50
21 megawatts or larger I deal with it. I've heard of
22 them all. I'm using my knowledge of all of the
23 projects that I've dealt with at the Commission in
24 the past 14 years, plus other projects that I
25 learn about in keeping up with the trade press and

1 other publications.

2 Q Your testimony indicates the use of
3 something called a LM6000 Sprint Peaker. And that
4 these would result in very comparable fuel
5 efficiency, 52.4 percent as compared to 52.8.

6 PRESIDING MEMBER MOORE: What's your
7 question?

8 BY MS. CHURNEY:

9 Q Is that a significant difference?

10 A Well, it shows that the Morro Bay Plant
11 in peaking mode would be expected to be slightly
12 more efficient than the Sprint.

13 Q Just slightly?

14 A Well, yes.

15 Q Given the anticipated surplus of power
16 at the time this new plant will come online, will
17 there be any true need for peaker capacity?

18 MS. HOLMES: I'm going to object to that
19 question --

20 PRESIDING MEMBER MOORE: Yeah, that's
21 not relevant to this topic, counsel.

22 BY MS. CHURNEY:

23 Q Is it possible to require as a condition
24 of certification that duct burning be used only
25 for operational benefits and not added power

1 capacity?

2 A I'd have to direct that question at Mr.
3 Valkosky and Commissioner Moore.

4 PRESIDING MEMBER MOORE: Ask the
5 question again.

6 MS. CHURNEY: It's possible to require
7 as a condition of certification that duct burning
8 be used only for operational benefits and not for
9 added power capacity, right?

10 PRESIDING MEMBER MOORE: It is possible
11 that if there was evidence that suggests that not
12 only that was feasible, but it was desirable, such
13 an item could be included as a condition of
14 certification. That is possible.

15 BY MS. CHURNEY:

16 Q Was this condition ever considered by
17 staff in its analysis?

18 A I never considered such a condition.

19 Q Has staff considered a condition on only
20 duct burning only when there's a stage 1, 2, or 3
21 power emergency situation?

22 A No.

23 Q If not, why not?

24 A Duct burning is part of operating a
25 power plant. It's like driving your car down the

1 highway, every once in awhile you have to adjust
2 your foot a little on the throttle to go a little
3 faster or a little slower.

4 The duct burner allows the power plant
5 operator to do just that. There's no reason I can
6 see, from an efficiency standpoint, to even
7 consider taking away the power plant operator's
8 ability to operate the duct burner.

9 PRESIDING MEMBER MOORE: Counsel, in the
10 interests of time planning, let me ask you how
11 many more questions you've got.

12 MS. CHURNEY: Approximately a dozen.

13 PRESIDING MEMBER MOORE: All right,
14 let's try and get through them as quickly as we
15 can. We'll take a lunch break after that.

16 MS. CHURNEY: If I could have just a
17 moment I may be able to streamline this.

18 (Pause.)

19 BY MS. CHURNEY:

20 Q You note in your supplement on page 2
21 that some generators must operate under automatic
22 generator control, which the system operator's
23 computer actually adjusts the power plant's
24 throttle moment by moment.

25 This ability of power plants to adjust

1 their power output is what you define as operating
2 flexibility, is that correct?

3 A Yes, that's part of it.

4 Q And who controls this AGC adjustment?

5 A When it's in effect the dispatcher does.

6 Q At Cal-ISO?

7 A I believe Cal-ISO would be the
8 dispatcher for the Morro Bay Plant; I'm not sure
9 of that. There will be a dispatcher, whoever that
10 is.

11 Q On the supplement page 3 you state that
12 a combined cycle power plant such as a new plant
13 offers an opportunity to design in the flexibility
14 that makes a power plant a valuable asset to the
15 system, which involves installing duct burners.

16 Is it staff's position that a new plant
17 here without duct firing at 1032 megawatts would
18 not be a valuable asset to the system?

19 A I have not made that conclusion.

20 Q In your supplement on page 3 you also
21 make reference to quote, steam and turn powers of
22 steam turbine generator effectively generating
23 free electricity. Are you saying California
24 ratepayers don't have to pay for that electricity?

25 A If you read it in context you'll see

1 that the steam produced is produced from heat that
2 would otherwise have been wasted by sending it up
3 the exhaust stack of a simple cycle gas turbine.

4 By building a combined cycle arrangement
5 you take this heat, which would have been thrown
6 away or wasted, and generate electricity with it.
7 That's why there's quote marks around the word
8 free, I believe.

9 Q You then discuss the addition of duct
10 firing on top of the combined cycle plant, and you
11 state, quote, the added steam requires that the
12 steam generator be larger in order to take
13 advantage of this additional steam. Larger than
14 what?

15 A Larger than it would be if the plant
16 were built without duct burners.

17 Q You also indicate that the alternative
18 of duct firing here is several smaller peaker
19 plants, and this is in your supplement, page 3.
20 Is that the only alternative?

21 A It's the most obvious one. And it's the
22 only one I considered.

23 Q You note that the technique of adding
24 duct firing is popular with developers of large
25 power plants around the world. Isn't that because

1 of its relatively low cost and results in profit
2 maximization for the generator?

3 MS. HOLMES: Again, I'm going to object
4 to this question.

5 PRESIDING MEMBER MOORE: Sustained.
6 Counsel, there's some reiterative learning process
7 that ought to go on here. I think it's pretty
8 clear where the objections are going to come. So,
9 let's keep a limit on the questions that tend to
10 lead the witness.

11 MS. CHURNEY: Okay. Well, I think
12 leading is valid cross-examination. I thought
13 that's what we're here doing, but --

14 PRESIDING MEMBER MOORE: Were here to --

15 MS. CHURNEY: -- I -- and I --

16 PRESIDING MEMBER MOORE: -- establish a
17 factual record.

18 MS. CHURNEY: -- and I do believe that
19 that's what I've been attempting to do, and I
20 apologize if you have not taken it that way.
21 But, --

22 BY MS. CHURNEY:

23 Q You also indicate that you are relying
24 on gas turbine 2000/2001 performance specs, volume
25 20. Has that been offered as an exhibit or

1 otherwise provided to the intervenor?

2 A It's standard industry trade
3 publication; it's available in many libraries. If
4 you wanted to see it I could Xerox it and send it
5 to you.

6 MS. CHURNEY: I have no further
7 questions.

8 PRESIDING MEMBER MOORE: Ms. Holmes,
9 redirect?

10 MS. HOLMES: No redirect.

11 PRESIDING MEMBER MOORE: Thank you. I'm
12 sorry, Mr. Valkosky.

13 HEARING OFFICER VALKOSKY: Ms. Holmes,
14 did you move in those portions of your exhibits
15 115, 116 and 124?

16 MS. HOLMES: No, I didn't, and I also
17 have a note that unfortunately the geo and paleo
18 portions of 115 and 116 were similarly not moved
19 in. So, if we could do them all at the same time
20 that would be --

21 PRESIDING MEMBER MOORE: Is there any
22 objection to that, applicant? Moving those into
23 the record?

24 MR. ELLISON: No. And let me confirm
25 that applicant's testimony on this topic was moved

1 into evidence.

2 PRESIDING MEMBER MOORE: We did move
3 that in.

4 MR. ELLISON: That's my understanding.

5 PRESIDING MEMBER MOORE: My
6 understanding, at the first.

7 Objections? City?

8 MR. SCHULTZ: No objection.

9 PRESIDING MEMBER MOORE: Objections,
10 intervenors?

11 MS. CHURNEY: I would ask simply that
12 that volume be provided to the intervenor, and if
13 that is --

14 PRESIDING MEMBER MOORE: Yeah,
15 absolutely.

16 MS. CHURNEY: -- agreeable -- if that is
17 agreeable, then we have no objection.

18 PRESIDING MEMBER MOORE: Absolutely.

19 HEARING OFFICER VALKOSKY: Mr. Baker,
20 when can you provide that to the intervenor?

21 MR. BAKER: I'll be glad to.

22 PRESIDING MEMBER MOORE: He's asking
23 when.

24 MR. BAKER: Oh, I'm sorry. I can have
25 it in the mail on Wednesday.

1 PRESIDING MEMBER MOORE: Okay.

2 MS. CHURNEY: -- satisfactory.

3 PRESIDING MEMBER MOORE: All right.

4 With that, let me just say it's 12:35. Boy, I'm
5 slipping on my procedural matters.

6 Before I announce a lunch break let me
7 ask if there is any member of the public who'd
8 like to testify on the efficiency topic area.

9 All right, seeing none, we'll close that
10 area off.

11 And it's 12:35. Let's meet back here at
12 1:20 to reconvene. Thank you.

13 (Whereupon, at 12:35 p.m, the hearing
14 was adjourned, to reconvene at 1:20
15 p.m., this same day.)

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1 AFTERNOON SESSION

2 1:25 p.m.

3 PRESIDING MEMBER MOORE: All right,
4 we're going to reconvene the evidentiary hearings
5 for December 17th. We've been on a lunch break.
6 We'll come back now and pick up out of order from
7 the published agenda, and deal with transmission
8 line safety and nuisance, followed by transmission
9 system engineering.

10 And with that I'm going to turn to the
11 applicant, Mr. Ellison, you have a witness?

12 MR. ELLISON: Commissioner, one
13 housekeeping matter before we begin. For those
14 witnesses that have testified this morning and
15 been excused, and are not listed as witnesses for
16 any future topic this morning, is there any reason
17 that we cannot send them home?

18 PRESIDING MEMBER MOORE: There is not.

19 MR. ELLISON: Okay. With respect to
20 transmission system safety and nuisance, as well
21 as transmission system engineering, our testimony
22 consists of two parts. There is the direct
23 testimony that we filed, and then there is
24 rebuttal to the testimony of CAPE.

25 And I'm going to begin, in the interests

1 of personal schedules of Mr. Hickok, with a
2 rebuttal witness, Mr. Randy Hickok. So, Mr.
3 Hickok, could you take the witness chair over
4 there.

5 PRESIDING MEMBER MOORE: Mr. Hickok,
6 you're going to have to be sworn in, so come on up
7 here and our scribe will swear you in.

8 HEARING OFFICER VALKOSKY: Mr. Ellison,
9 this testimony pertains to both of the
10 transmission topics, or just one of them?

11 MR. ELLISON: It pertains to rebuttal to
12 two specific paragraphs of Mr. Boatman's testimony
13 on -- and his testimony does not specify which
14 topic it is, but it relates to transmission system
15 engineering, I would say.

16 HEARING OFFICER VALKOSKY: Thank you.
17 Whereupon,

18 RANDALL HICKOK
19 was called as a witness herein, and after first
20 having been duly sworn, was examined and testified
21 as follows:

22 DIRECT EXAMINATION

23 BY MR. ELLISON:

24 Q Mr. Hickok, could you state and spell
25 your name for the record, please?

1 A My name is Randall Hickok; Randall is
2 R-a-n-d-a-l-l; Hickok is H-i-c-k-o-k.

3 Q And where are you employed?

4 A I am employed by Duke Energy North
5 America here in Morro Bay.

6 Q And could you briefly describe your
7 duties and responsibilities with respect to that
8 employment?

9 A My title is Senior Director of
10 California Assets. I'm in charge of operations of
11 Duke's existing power plants here in California.
12 We have four plants.

13 Q And is among your responsibilities
14 overseeing the operation of the existing plant,
15 including -- well, let me back up, let me strike
16 that question.

17 And are you generally familiar with the
18 California ISO's policies on congestion
19 management?

20 A Yes, I am.

21 Q And can you testify with regard to the
22 impact of those policies on both the existing
23 Morro Bay facility as well as the proposed
24 modernization of that facility?

25 A I can.

1 Q Do you have a copy of the declaration of
2 Don Boatman filed in this proceeding on December
3 11th?

4 A I do.

5 Q Can I refer you to the numbered
6 paragraphs 10 and 11 of that testimony?

7 A Yes.

8 Q Those paragraphs generally assert that,
9 if I can paraphrase the testimony, that Duke
10 Energy profits from congestion on the transmission
11 grid associated with Morro Bay.

12 My first question is could you briefly
13 explain the congestion management protocols of the
14 California ISO?

15 A Sure. For any existing transmission
16 path in California there is a predefined
17 transmission capability on each line, as defined
18 by the California ISO.

19 Any time more power is scheduled to move
20 across that transmission line, then that line can
21 physically accommodate more than its rated path
22 you have congestion that needs to be alleviated.

23 The way that the California ISO
24 alleviates congestion across a transmission line
25 is, their primary tools is the exercise of

1 incremental and decremental bids.

2 Incremental bids are standing bids at
3 the ISO. They've been submitted by players in the
4 market. And they represent the price at which
5 generators on the high side of the congestion will
6 produce more electricity. So, what you're doing
7 there is the California ISO will go to those
8 standing bids and will select the generators with
9 the lowest cost power they're willing to generate
10 more in that region. So the region that the power
11 is trying to get into will see an increase in
12 generation by generators that are on that side of
13 the transmission constraint.

14 To keep the grid balanced there are
15 decremental bids to be exercised in the area that
16 the power is scheduled to flow from. So, the
17 decremental bids are essentially prices that
18 generators will pay in order not to run their
19 unit, and instead receive power provided by the
20 ISO in the zone that they're trying to get to.

21 So, the California ISO will exercise the
22 highest decremental bids on the congested side of
23 the interchange path because that represents the
24 people that are willing to pay the most for
25 replacement power on the other side of the

1 constrained tie.

2 So, in any situation with congestion,
3 more power will be generated in the zone that the
4 transmission -- that the energy is trying to get
5 to via incremental bids. Less will be produced in
6 the zone that the power was originally scheduled
7 to come from via decremental bids.

8 Q And is it true that this system of
9 bidding that you just described is the way that
10 the ISO manages congestion every day?

11 A Yes.

12 Q Mr. Boatman's testimony in paragraph 10
13 describes certain events on or about mid June of
14 1999. Do you see that?

15 A I do.

16 Q Could you briefly describe what occurred
17 during that time with respect to the Morro Bay
18 Power Plant and what resulted in the newspaper
19 article that's referenced there?

20 A Yes. To the best of my recollection
21 there was a circumstance in which the ISO needed
22 to decrement generation largely in southern
23 California. They had a system event that made
24 power flow in the way that we hadn't seen on the
25 grid before. In order to keep the system in

1 balance they needed to back generation off in
2 southern California.

3 At the time, this is while the ISO's
4 market rules were relatively young, and they had
5 defined the geographic region in which decremental
6 bids could be provided, such that it included Moss
7 Landing and several other plants. I'm sorry, not
8 Moss Landing, Morro Bay. Morro Bay submitted
9 decremental bids. The ISO accepted those
10 decremental bids to back the units off.

11 Q And was there, at that time, any sort of
12 limit on the amount of the bid that you could
13 submit would be?

14 A There was a cap of \$250 per megawatt
15 hour.

16 Q And so the rules allowed you to bid any
17 price up to \$250 a megawatt hour, is that correct?

18 A That's correct.

19 Q And am I correct that at the time of
20 this event that Duke's decremental bid was at that
21 cap amount?

22 A My understanding is it was for a great
23 portion of the duration of the event.

24 Q Okay. And the ISO accepted that bid, is
25 that correct?

1 A That's correct.

2 Q Is there -- in any way did Duke violate
3 any of the rules regarding congestion management
4 that existed at that time?

5 A No. No, we did not.

6 Q And were you ever accused by the ISO of
7 violating any of the rules that existed at that
8 time?

9 A No, we were not.

10 Q Was the ISO's concern that they felt
11 that the rules that existed at that time should be
12 changed?

13 A As a result of this incident the ISO
14 made an emergency filing with the FERC to change
15 the definition of how decremental bids could be
16 exercised in this region, largely the perceived
17 shortcoming of the ISO's methodology, that they
18 had defined the geographic boundary in which
19 generators were qualified to provide this relief
20 service too narrowly. And as a result there were
21 only a handful of generators capable of providing
22 the decremental bid service.

23 The ISO submitted a filing to enlarging
24 the geographic area so that there would be greater
25 levels of competition to provide the service. So

1 we went from a small geographic area in which my
2 understanding was generators immediately to the
3 south of the intertie to any generator in southern
4 California.

5 Q And what was Duke's position with
6 respect to this rule change sought by the ISO?

7 A Duke submitted a filing in which we
8 recognized the shortcomings of the existing system
9 and supported the change on the part of the ISO.
10 We had some alternative methodologies proposed in
11 our filing, but the filing as a whole was
12 supportive that the ISO making that change.

13 MS. CHURNEY: I'll object to that
14 testimony and move to strike his last answer
15 unless counsel is prepared to produce that filing
16 as an exhibit.

17 MR. ELLISON: We will produce the
18 filing.

19 HEARING OFFICER VALKOSKY: Mr. Ellison,
20 when will you produce the filing?

21 MR. ELLISON: Well, I don't have it here
22 with me today, so it won't be today. But we'll
23 produce it as soon as possible.

24 MS. CHURNEY: Will this witness be made
25 available again to cross-examine with respect to

1 that exhibit at the time that it's produced?

2 MR. ELLISON: He can be made available
3 if the Committee so orders.

4 PRESIDING MEMBER MOORE: Well, I'm not
5 sure -- you're producing a filing that was made
6 with the FERC -- I'm sorry, with the ISO. And
7 then to the FERC, is that correct?

8 MR. ELLISON: That's correct, and the
9 point of this testimony is simply to say that Duke
10 did not object to changing the rules that produced
11 the anomaly described in Mr. Boatman's testimony.

12 PRESIDING MEMBER MOORE: And so you're
13 agreeing to supply that. Why would this witness
14 have to be available for cross-examination on the
15 face of the document that was submitted on behalf
16 of Duke? I'm not clear on that.

17 MS. CHURNEY: Well, whoever produced the
18 document I think should be subject to cross-
19 examination if they're going to introduce it as an
20 exhibit.

21 MR. ELLISON: Well, the document would
22 be produced at your request. And the document
23 speaks for itself. I mean, the point here is what
24 does the document say. We're not introducing the
25 document for any other purpose than to say that

1 the document says what it says.

2 PRESIDING MEMBER MOORE: I understand.

3 Well, I'm not sure that this would reopen this
4 line of testimony. If there was some argument at
5 a future date that it did, we'll take it under
6 advisement. But right now I don't see the
7 connection.

8 So we wouldn't make the decision about a
9 witness until a later --

10 MS. CHURNEY: That's fine.

11 PRESIDING MEMBER MOORE: -- time. So
12 there's no other issue other than Mr. Ellison
13 agrees to supply the document. We'll have it on
14 the record. Thank you.

15 Mr. Ellison.

16 BY MR. ELLISON:

17 Q My last question, Mr. Hickok. The
18 suggestion is made, or at least implied in Mr.
19 Boatman's testimony that Duke is not interested in
20 relieving congestion because it somehow at Morro
21 Bay profits from congestion?

22 MS. CHURNEY: Objection,
23 mischaracterizes the testimony.

24 MR. ELLISON: Okay, I'll rephrase the
25 question.

1 PRESIDING MEMBER MOORE: Mr. Ellison, if
2 that's where you are intending to go, then why
3 don't you simply read the paragraph and then -- or
4 the line that's worrying you and ask the witness
5 to respond to that line.

6 MR. ELLISON: I'll just ask the question
7 this way.

8 BY MR. ELLISON:

9 Q Mr. Hickok, what is the financial impact
10 of congestion on Duke at Morro Bay?

11 A Generally the financial impact of
12 generation at Morro Bay is a detrimental one. Of
13 the three geographic zones of the ISO, as
14 identified within California, the three are NP15,
15 SP15 and ZP26.

16 ZP26 is the zone in which Morro Bay is
17 located. And as a rule ZP26 realizes lower
18 pricing than the other two regions primarily
19 because they are -- this region has more
20 generation than it has load. So the load has to
21 be exported to southern California or northern
22 California, depending on the season. And has to
23 be transported across congested interties.

24 As a result, in order to get your power
25 out of California you have to sell it at a lower

1 price. The cost of congestion across constrained
2 interties or paths is borne by the people moving
3 the power across the grid.

4 So if we are selling power from Morro
5 Bay to NP15 and there's a constraint at NP15, we
6 will, in order to get our power to the far side
7 we'll have to pay the cost of transmission between
8 those two zones. The cost of transmission between
9 those two zones is what results as -- it's the
10 byproduct of the ISO's congestion process.

11 When you take a look at how much money
12 the ISO -- for decremental bids and that against
13 what it costs to buy the power to provide the
14 power to the decremental bids, that those costs
15 are lumped together and are allocated to those who
16 use the intertie.

17 Q So in summary, congestion with regard to
18 zone ZP26 operates to reduce the prices that the
19 Morro Bay Power Plant can obtain for its services,
20 correct?

21 A That's correct.

22 MR. ELLISON: That's all I have.

23 PRESIDING MEMBER MOORE: Thank you.

24 Your witness is available now? Staff?

25 MS. HOLMES: I have no questions.

1 MR. SCHULTZ: No questions.

2 PRESIDING MEMBER MOORE: City? All
3 right. Intervenors, CAPE?

4 MS. CHURNEY: Yes, just a few.

5 CROSS-EXAMINATION

6 BY MS. CHURNEY:

7 Q You have no basis to believe that what
8 is stated in paragraphs 10 and 11 of Mr. Boatman's
9 declaration is incorrect, do you?

10 A I believe that in paragraph 10 the final
11 sentence, Duke Morro Bay Power Plant was the only
12 plant that could relieve the congestion due to the
13 strategic location along the power grid, is false.

14 I believe that at a minimum Diablo
15 Canyon was capable of providing similar service.
16 Beyond that, I am not personally familiar with
17 just how broadly that ordinarily the ISO would
18 define that zone. But at a minimum I believe
19 Diablo Canyon was capable of providing the same
20 service.

21 Q And you're generally familiar with the
22 incident that is described in paragraph 10 which
23 occurred on June 17, 1999, is that correct?

24 A I am.

25 Q And you're also familiar, I take it

1 then, of what amount was charged by Duke to Cal-
2 ISO to produce the power that day, is that true?

3 A I'm sorry, I'm familiar with what?

4 Q Are you familiar with what Duke charged
5 that day to Cal-ISO to reduce the load?

6 A Generally, yes.

7 Q And is it correctly stated then that
8 generally it was a million dollars?

9 A I believe over the course of that 24-
10 hour period it was a million dollars, or roughly
11 around there.

12 Q And how is a charge of that magnitude
13 detrimental, you've also testified here today that
14 generally congestion, you believe that congestion
15 management is detrimental to Duke.

16 Was that, on that day, detrimental to
17 Duke?

18 A On that day, well, the system doesn't
19 exist like this anymore. You know, the
20 circumstances of June 17, 1999 aren't the way that
21 the market operates today.

22 MS. CHURNEY: I have no further
23 questions.

24 PRESIDING MEMBER MOORE: So, let me just
25 clarify that last remark. And that is you're

1 saying that the rules that were -- the ISO
2 operating rules for inc's and dec's that was
3 extant on that day does not exist anymore?

4 MR. HICKOK: Yes. Largely as a result
5 of this event.

6 PRESIDING MEMBER MOORE: Is there a
7 systems of inc's and dec's now that exists?

8 MR. HICKOK: There are inc's and dec's
9 now.

10 PRESIDING MEMBER MOORE: It's just based
11 on a different set of --

12 MR. HICKOK: My appreciation of what's
13 different now is that the geographic area and the
14 number of bids that the ISO is allowed to include
15 when they award the service is much larger than it
16 was previously.

17 That at the time of this event there
18 would have been a handful of people that under the
19 ISO's tariff would have been allowed by this
20 service; after this event they expanded that such
21 that anybody in an entire zone, say all of
22 southern California now would compete to provide
23 this same service.

24 PRESIDING MEMBER MOORE: So the inc's
25 and dec's system is not zone specific in the sense

1 that there's just -- that there are three sets of
2 rules, path 15 north, path 15 south and 26 rule;
3 that, in fact, there's a different --

4 MR. HICKOK: My understanding is that
5 the methodology is applied in all zones in all
6 parts of the state. It's the same rules. The
7 players will differ depending on which zone you're
8 looking at at the time.

9 PRESIDING MEMBER MOORE: So it is zone
10 dependent. Redirect, Mr. Ellison.

11 MR. ELLISON: None.

12 PRESIDING MEMBER MOORE: All right.
13 Thank you. We'll go to staff. Oh, I'm sorry, you
14 have a second witness.

15 MR. ELLISON: We do have other
16 witnesses. If Mr. Hickok can be excused we will
17 call them.

18 HEARING OFFICER VALKOSKY: I'd just like
19 to clarify my understanding. You will be
20 providing the filing to Cal-ISO to intervenor
21 CAPE, that is correct, right?

22 MR. ELLISON: We will provide a copy of
23 the filing. I believe the filing actually went to
24 the Federal Energy Regulatory Commission.

25 HEARING OFFICER VALKOSKY: Okay, I'm

1 sorry, then the FERC filing. And, CAPE, for your
2 part you will inspect that and promptly advise the
3 Committee whether or not you wish to recall Mr.
4 Hickok, is that correct?

5 MS. CHURNEY: Or have the responsible
6 witness available to cross-examine.

7 HEARING OFFICER VALKOSKY: Correct.

8 MS. CHURNEY: Yes.

9 HEARING OFFICER VALKOSKY: Okay.

10 MR. ELLISON: Let me be clear less there
11 be any confusion, that we are reserving our right
12 to object to the recall of this witness, because
13 again I emphasize that the only point for which
14 this topic is relevant is what that document says.

15 HEARING OFFICER VALKOSKY: That's
16 understood, Mr. Ellison.

17 PRESIDING MEMBER MOORE: Thank you, Mr.
18 Hickok, you are excused. And, Mr. Ellison, you
19 have a second witness?

20 MR. ELLISON: We do. We actually have a
21 panel and this covers both topics, system
22 engineering as well as safety and nuisance.

23 PRESIDING MEMBER MOORE: Let's ask the
24 panel to come over to this end of the table and
25 get sworn in from over here.

1 MR. ELLISON: Okay. There are two
2 chairs up there, if you prefer.

3 PRESIDING MEMBER MOORE: Oh, I'm sorry,
4 originally we only had one. All right, excuse me.

5 MR. ELLISON: We would like to call Mr.
6 Allan Jones and Mr. Romulo Barreno.
7 Whereupon,

8 G. ALLAN JONES and ROMULO BARRENO
9 were called as witnesses herein, and after first
10 having been duly sworn, were examined and
11 testified as follows:

12 DIRECT EXAMINATION

13 BY MR. ELLISON:

14 Q Can I ask each of you to state and spell
15 your name for the record, please?

16 MR. JONES: Allan Jones, A-l-l-a-n
17 J-o-n-e-s.

18 MR. BARRENO: Romulo Barreno,
19 R-o-m-u-l-o B, as in boy, -a-r-r-e-n-o.

20 MR. ELLISON: And let me ask first, Mr.
21 Jones, could you briefly summarize your
22 qualifications with respect to transmission system
23 engineering, as well as safety and nuisance?

24 MR. JONES: Bachelors degree and masters
25 degree in electrical engineering from the

1 University of California. I worked for PG&E for
2 approximately 20 years; about 50 percent of that
3 time was as a transmission system analyst.

4 The last 20 years I've worked on
5 transmission system planning projects associated
6 with the interconnection of about 150 proposed
7 generating facilities.

8 MR. ELLISON: And, Mr. Barreno, same
9 thing?

10 MR. BARRENO: I have a bachelor of
11 science and a master of science in electrical
12 engineering. I have over 20 years of experience
13 in the electric industry in the areas of planning,
14 operation of power systems and electricity market
15 development. I have performed and directed the
16 performance of a large number of transmission
17 plans and different voltages, 69, 230 kV and 500
18 kV.

19 MR. ELLISON: Thank you. In the
20 interest of administrative efficiency now I'm
21 going to address all of my questions to Mr. Jones,
22 who will answer on behalf of the panel.

23 BY MR. ELLISON:

24 Q Mr. Jones, do you have before you the
25 applicant's testimony on transmission system

1 engineering and transmission line safety and
2 nuisance which begins at page 74 of exhibit 117?

3 A Yes, sir.

4 Q Was this document prepared by you and
5 Mr. Barreno or at your respective direction?

6 A Yes, sir.

7 Q Do you have any corrections or additions
8 that you'd like to make to that testimony?

9 A No, I don't think so.

10 Q Are the statements therein true and
11 correct to the best of your knowledge?

12 A Yes, they are.

13 Q And do the opinions therein reflect your
14 own professional opinions?

15 A Yes, sir.

16 MR. ELLISON: I would like to move the
17 admission of that portion of exhibit 117 and the
18 other exhibits incorporated by reference therein,
19 which include a portion of the AFC, exhibit 4; a
20 portion of exhibit 19, specifically responses 125
21 through 127; a portion of exhibit 22, specifically
22 responses 274 through 282; exhibit 46; exhibit 48;
23 and exhibit 108.

24 PRESIDING MEMBER MOORE: Any objections?

25 MS. CHURNEY: I object to exhibit 46 as

1 hearsay.

2 PRESIDING MEMBER MOORE: Let me just
3 procedurally just kind of make this a continuum.
4 Are there any objections from staff?

5 MS. HOLMES: No.

6 PRESIDING MEMBER MOORE: From the City?

7 MR. SCHULTZ: No objections.

8 PRESIDING MEMBER MOORE: All right.

9 From CAPE you're objecting to including 46?

10 MS. CHURNEY: Yeah, if I understand what
11 46 is, and let me just confirm this. It's the
12 system impact facility study for the Morro Bay
13 Power Plant issued by PG&E, is that correct?

14 MR. JONES: That's correct.

15 MS. CHURNEY: Okay. Well, I've lodged
16 my objection.

17 PRESIDING MEMBER MOORE: I'm not
18 understanding your objection. Please repeat it.

19 MS. CHURNEY: It's hearsay unless there
20 is a witness from PG&E here available to testify
21 with respect to it.

22 PRESIDING MEMBER MOORE: All right. I
23 think we may have a difference about what can be
24 admitted. So, as I'm advised, this is a question
25 of how much weight we give it, not whether or not

1 it can be admitted or not.

2 So, I'm overriding that. This will be
3 admitted. In terms of discussion, if you want to
4 discuss the item, that's another question. But as
5 far as whether or not it, as an exhibit, it ought
6 to come in or not, it should come in.

7 Mr. Ellison.

8 BY MR. ELLISON:

9 Q Mr. Jones, by way of summary of your
10 testimony let me begin by asking you are there any
11 new transmission system facilities associated with
12 the modernization project?

13 A No, sir.

14 Q Could you briefly explain what the
15 existing transmission system facilities that
16 export power from the Morro Bay project are?

17 A Yes. The Morro Bay switching station is
18 primarily a 230,000 volt facility, what we call
19 230 kV. And there are three pairs of lines that
20 exit the station.

21 The northern pair are the Morro Bay
22 Gates 230 kV lines, which terminate at gate
23 substation, which is in the southwest corner of
24 Fresno County by highway 5.

25 There are a pair of 230 kV lines that go

1 across sort of due east to Bakersfield area where
2 they terminate at the Midway substation. And
3 there's a pair of lines that work their way south
4 to Mesa substation. And Mesa substation is a
5 facility which basically serves the greater Santa
6 Maria area and areas primarily to the south to the
7 end of the PG&E system.

8 In addition to that there's a large
9 transformer that's part of the Morro Bay outlet
10 facility which serves the greater San Luis Obispo
11 area.

12 One of the 230 kV lines that goes to the
13 gates is moved through a relatively new station at
14 Atascadero, near Templeton, I guess. And this
15 provides distribution and some transmission
16 reinforcement in the Paso Robles and Templeton and
17 Atascadero area.

18 These are the outlet facilities for the
19 Morro Bay Power Plant.

20 Q And what is the impact of the proposed
21 modernization on these transmission facilities?

22 A With the addition of approximately 200
23 more megawatts requires or results in a little
24 more power out of the facility going north. This
25 is also a function of what happens in Kern County,

1 which was part of the assumptions that went into
2 the interconnection study.

3 But the end result is that you get minor
4 overload under normal conditions and under several
5 emergency conditions for the transmission system
6 that have to be accommodated.

7 Q And what is Duke's proposal for
8 addressing these minor overloads?

9 A In the interconnection study the utility
10 provides what they consider to be reasonable ways
11 to accommodate these overload conditions. And
12 they provide reconductoring, rerating and in some
13 cases reduction in generation to accommodate these
14 minor overloads.

15 And they present these to you as
16 equivalent alternatives. You pick what you like.
17 Duke has provided a response indicating they would
18 like to accept the alternative of rerating the
19 transmission lines where appropriate. And in some
20 cases there would be some generation reduction
21 required.

22 PRESIDING MEMBER MOORE: Mr. Ellison,
23 before he goes on let me just ask him to elaborate
24 on the word rerating of the transmission
25 facilities; what's involved in that.

1 MR. JONES: Sure. Several years ago
2 PG&E decided that they would take a hard look at
3 rerating their lines. What I mean by that is that
4 the ratings they give their lines in the summer,
5 in the winter, are based on some assumptions about
6 the performance of the lines of the ambient
7 temperature. And based on some heat balance
8 equations that you run through.

9 And it comes out with a number. You
10 say, okay, under these conditions this is the
11 rating of the line.

12 Several years ago they look at these
13 numbers and they've always known they've been a
14 little conservative. And they decided to try
15 rerating their lines based on various different
16 criteria.

17 One of the primary criteria they use is
18 to simply rerate the line based on an additional
19 two-foot-per-second wind. Their basic numbers are
20 based on two-foot-per-second wind. They want to
21 raise them up to four-foot-per-second wind.

22 The impact of that is to raise the
23 normal and emergency, for example, summer ratings
24 by approximately 20 percent.

25 They've got a procedure in place that's

1 been in place for several years now. You can read
2 all about it in their annual transmission
3 assessment packages. And this is what they do to
4 rerate the lines.

5 They conduct studies, preliminary and
6 final studies, to determine whether this is
7 acceptable. And they've been relatively
8 successful. In fact, they've been, as far as I
9 know, completely successful in doing that.

10 PRESIDING MEMBER MOORE: So, rerating,
11 in essence, is a measure of what the capacity of
12 that line is to carry electricity through it,
13 which is a measure of how much heat it generates,
14 which is also some surrogate measure of what the
15 sag in that line is going to be safely -- that can
16 safely be accommodated?

17 MR. JONES: Yes, sir.

18 PRESIDING MEMBER MOORE: Mr. Ellison.

19 BY MR. ELLISON:

20 Q Following up on that theme, how do
21 PG&E's current ratings compare to the ratings of
22 Southern California Edison Company?

23 A As I said they've known for years that
24 the lines are relatively conservatively loaded, or
25 rated. If I had to pick a number I would pick a

1 number something like say that Edison and San
2 Diego Gas and Electric's numbers are maybe 35 to
3 40 percent higher. And there's sort of an obvious
4 reason for it.

5 The criteria, for example, at Southern
6 California Edison is they will run their lines at
7 10 degrees C higher. And they will also make
8 their calculation at a four-foot-per-second wind.

9 And that leads to this additional 35 to
10 40 percent.

11 Q So would it be fair to say that the
12 rerating that we're discussing in this proceeding
13 would bring the ratings for the lines in question,
14 make them more similar to what has been used for
15 years by the Southern California Edison Company,
16 as well as SDG&E?

17 A It doesn't get real similar, but it
18 raises up. It's about half way there.

19 Q So would that be then that even as
20 rerated they would still be more conservative than
21 the Edison and San Diego ratings are? Is that
22 what you're saying?

23 A Yes, sir.

24 Q Is the rerating proposal that you
25 described an acceptable proposal for dealing with

1 this congestion in your professional opinion?

2 A Certainly. And it's been done in the
3 past for several other projects. And PG&E uses,
4 as an internal mechanism, when they have some of
5 their own lines that load up heavily and they have
6 reinforcement projects, in lieu of building
7 additional lines or spending the large amount of
8 money required to reconductor lines and go out
9 there and go through all of what goes along with
10 that, they've decided this is a reasonable
11 approach to take. And they have all the
12 mechanisms in place to execute this.

13 Q You mentioned this has been done for
14 other projects, so I take it that this proposal is
15 not unique to Morro Bay?

16 A No, of course not.

17 Q Was it done at Moss Landing?

18 A Yes, it was, quite similar.

19 Q Has this rerating proposal been reviewed
20 by the California Energy Commission, Pacific Gas
21 and Electric Company and the California ISO?

22 A Yes, it has.

23 Q And could you briefly describe their
24 conclusions with respect to it?

25 A They find it to be an acceptable means

1 to increase ratings without all the additional
2 work that would be required to rebuild or add
3 lines.

4 Q Okay. And with regard to the topics of
5 transmission system engineering, as well as safety
6 and nuisance, have you identified any significant
7 adverse environmental impacts associated with
8 those topics?

9 A No, not at all.

10 Q And again with respect to those topics
11 does the proposed modernization comply with all
12 applicable laws, ordinances, regulations and
13 standards?

14 A Well, since you're not really building
15 anything else, it certainly will.

16 Q That completes the summary. Now with
17 respect to rebuttal I'd like you to refer to the
18 testimony of Mr. Boatman, please. Do you have
19 that?

20 A Yes, I do.

21 Q We'll begin by referring you to the
22 numbered paragraph 4. Do you see that?

23 A Yeah.

24 Q Beginning at the second sentence Mr.
25 Boatman testifies: While in the past PG&E has

1 temporarily rerated lines to accommodate
2 emergencies, and then it goes on from there. Do
3 you see that?

4 A Yes, I do.

5 Q Is it true that PG&E only rerates lines
6 temporarily to accommodate emergencies?

7 A Well, it sort of depends on how you ask
8 the question. You want to ask a different
9 question, or do you want me to interpret that,
10 or --

11 Q Is rerating something that is limited
12 only to temporary circumstances to accommodate
13 emergencies?

14 A No, it isn't. Remember that each one of
15 PG&E's lines, which could be any given conductor,
16 is rated, it has a winter rating and it has a
17 summer rating. It has a normal rating and it has
18 an emergency rating.

19 And depending on where the line is
20 located it may have a coastal rating or what they
21 call an interior rating.

22 So every conductor of a given type has
23 at least six ratings. And they're used for normal
24 and emergency conditions.

25 And all the years that I worked there,

1 and even those fairly subsequent, this is really
2 pretty much all we had to work with. And you
3 could weasel your way around a little bit if you
4 had some extenuating circumstance like a
5 particular low temperature or something like that.

6 They have gone into a much more
7 comprehensive way of rating their lines in the
8 last couple years. The four-foot-per-second wind
9 addition seems to be the most prominent.

10 But temporary rerates and things like
11 that, well, it doesn't make much sense.

12 Q But am I correct that where appropriate
13 PG&E does make reratings that are permanent and
14 intended for use under normal conditions?

15 A Certainly.

16 Q Turning to the last part of that same
17 sentence, Mr. Boatman testifies that these
18 reratings quote, typically occur in the winter
19 when cool temperatures allow more power to flow on
20 a given day resulting in differing summer and
21 winter power ratings. Do you see that?

22 A Yeah.

23 Q Is it appropriate to do reratings in the
24 summer?

25 A It's appropriate to do reratings

1 whenever you'd like to. You could rerate for
2 winter, although I don't think they do. I think
3 they've -- in fact I know that they've limited
4 this rerating to summer because they have some
5 information, some meteorological information
6 associated with summer temperatures and wind.

7 Q In your experience is there anything at
8 all inappropriate about doing a rerating for the
9 summer condition?

10 A Not at all.

11 Q Turning to paragraph five of Mr.
12 Boatman's testimony in the first sentence he
13 testifies that operating this line during the hot
14 summer months in a rerated mode will increase fire
15 hazard conditions. Do you agree with that
16 statement?

17 A Of course not.

18 Q What is your basis for disagreeing with
19 that statement?

20 A Part of the procedure that's used when
21 PG&E rerates a line is to conduct an infrared
22 inspection of the line, and to do a field patrol
23 of the line to determine clearance requirement.

24 And subsequently then they have an idea
25 of what needs to be accomplished in order to make

1 this rerating a valid function or practice.

2 And the idea that you just simply rerate
3 a line and then let whatever happens happen
4 doesn't make any sense. Because as part of the
5 rerate process they will go out there and they
6 will do whatever they need to do to insure that
7 this is going to work.

8 Q Turning to paragraph six, Mr. Boatman
9 testifies that proper engineering practice also
10 does not allow this line to be rerated during the
11 summer months in the Templeton area where
12 temperatures exceeding 100 degrees Fahrenheit are
13 common.

14 Do you see that statement?

15 A Yeah.

16 Q Are you aware of any industry standard
17 or applicable requirement that prevents the
18 rerating at Templeton?

19 A No, not at all.

20 Q In the next line he testifies that
21 rerating will remove safety factors designed into
22 the line. Will the rerating violate any required
23 margins of safety that you're aware of?

24 A No, they won't because they're going to
25 review all of that before they allow it to be

1 done.

2 Q In summary, based on your experience is
3 there any reason that you know of that PG&E should
4 not be able to rerate during the summer and winter
5 as needed to accommodate this project?

6 A Not at all.

7 Q Turning to paragraph seven, Mr. Boatman
8 offers testimony regarding the California ISO's
9 preliminary approval letter. Do you see that?

10 A Yes, I do.

11 Q And there is a quote in the first
12 sentence of paragraph seven, do you see that?

13 A Yeah.

14 Q Is that an accurate quote from the ISO's
15 preliminary approval letter?

16 A No, it is not. It's missing six or
17 seven words.

18 Q Okay. Could you please read into the
19 record the accurate quote of the sentence in
20 question?

21 A The ISO summary states, both rerating or
22 reconductoring of the line would remove
23 transmission line constraints and allow DENA to
24 provide maximum generation output under normal
25 peak load conditions.

1 MS. CHURNEY: Just to clarify the
2 record, you're reading from the actual letter,
3 itself?

4 MR. JONES: Which one?

5 PRESIDING MEMBER MOORE: What you just
6 read.

7 MR. JONES: That was the CEC's
8 presentation.

9 MS. CHURNEY: So you're reading from the
10 FSA, not the preliminary approval letter?

11 MR. JONES: I'm reading from 4.5-6 of
12 the CEC presentation.

13 BY MR. ELLISON:

14 Q Mr. Boatman's testimony is unclear as to
15 who he's quoting here, whether he's quoting the
16 FSA or the ISO letter, since both are mentioned.
17 And I was about to ask you to read from the FSA.
18 Since you've already read from the FSA, and let's
19 clarify the record, thank you, counsel, that
20 that's what that was from.

21 Would you read the corresponding
22 sentence from the California ISO's preliminary
23 approval letter?

24 A Both rerate and reconductoring of the
25 line would remove transmission line constraints

1 and allow DENA to provide maximum generation
2 output under normal peak load conditions.

3 Q Thank you. Is it your understanding
4 that the ISO letter required both rerating and
5 reconductoring of the line?

6 A No. That should be read or.

7 Q Okay. And what is your basis for
8 believing that the ISO was allowing for either
9 rerating or reconductoring?

10 A I've been involved in this whole
11 development all the way along. I went to the PG&E
12 meetings for the presentation of the
13 interconnection study, and then to the meeting
14 with the ISO for the review and discussion of what
15 was going to be acceptable. And it's an
16 alternative, so it's an or.

17 Q Further down in paragraph seven Mr.
18 Boatman discusses the study that's going to be
19 undertaken during the summer of 2002 to confirm
20 the rerating. Do you see that?

21 A Yes.

22 Q What is the purpose of this summer
23 study?

24 A The study is going to provide the
25 information on the conditional line to verify that

1 the rerating can be done. And as I indicated
2 before, they will do an infrared scan on the
3 hardware, and then they will do a patrol of the
4 line reviewing the right-of-way, and the tree
5 trimming, or the tree conditions to determine what
6 would need to be -- what work would need to be
7 done in order to accommodate this.

8 Q Given that this study is yet to be
9 conducted, what is your confidence level that the
10 rerating is feasible and appropriate for this
11 project?

12 A All the other projects that have
13 utilized this technique have been found to be
14 acceptable with minor construction work required.
15 I don't believe there's anything unique about the
16 Gates Morro Bay 230 kV transmission lines.

17 When PG&E offers this, and the
18 interconnect study as an alternative, it's because
19 they believe it's about alternative. And the
20 purpose of the study is simply to dot the i's and
21 cross the t's, determine what needs to be done and
22 maybe what material may be required. To
23 accommodate this, for example, you may have to
24 raise a tower here and there. And that's the
25 whole purpose of this.

1 We have not seen an interconnection
2 project associated with generation like this, or
3 internal rerating projects that PG&E has done that
4 they were not capable or able to go ahead and do
5 the rerating as proposed.

6 Q Let me direct your attention to
7 paragraph eight of Mr. Boatman's testimony. In
8 the first sentence he states that the FSA part one
9 also fails to address, quote, the first preference
10 in mitigation, unquote, specified in the final
11 SI/FS and he goes on.

12 Did either PG&E or the California ISO
13 specify a preference for reconductoring?

14 A No. They alternatives are given in, I
15 don't know, whatever order PG&E decides to put
16 them down in. And there is no recommendation from
17 the utility or from the ISO about what is
18 selected.

19 The selection is left up to the
20 applicant. And they are supposed to be valid
21 alternatives.

22 Q Turning to the next sentence Mr. Boatman
23 testifies that Duke has also refused to consider
24 the recommended mitigation suggested by the Cal
25 ISO that would allow the Cal ISO, rather than

1 Duke, to control load from the plant on these
2 lines.

3 First let me ask you did the ISO
4 recommend a type of mitigation that would allow
5 the California ISO, as quoted here, to control the
6 load from the plant on these lines?

7 Let me rephrase my question. Is that,
8 in your opinion, an accurate description of any of
9 the alternatives recommended by the ISO?

10 A No.

11 Q Are you familiar with the phrase
12 remedial action scheme?

13 A Yes, sir.

14 Q Is that one of the alternative remedies
15 for the minor overloads that was discussed in the
16 California ISO letter and the PG&E study?

17 A Yes, for one of the conditions that
18 required attention.

19 Q Okay. And did Duke consider a remedial
20 action scheme alternative?

21 A Sure, there'll be a remedial action
22 scheme alternative associated with the problems
23 with the 70 kV subtransmission system.

24 Q Turning to paragraph nine there's some
25 discussion there of a generator special facilities

1 agreement and when that document was signed.

2 And let me ask Mr. Barreno, could you
3 briefly describe the procedure for this facilities
4 agreement and the timing of when it was provided
5 to Duke and when Duke signed it?

6 MR. BARRENO: The procedure is pretty
7 simple. Once PG&E utility completes the system
8 impact study and facility study, then we have 45
9 days to respond to the utility as to whether we
10 would like a GSFA be prepared.

11 So we were given to July 10th to do so.
12 On July 9 we advised the utility that we would
13 like a GSFA be prepared and send it to us for
14 signature.

15 Which was done on July 27th, I believe
16 23rd, and then we have 60 days approximately to
17 sign the agreement, which was take us to September
18 25th.

19 Duke signed the agreement on September
20 24th.

21 MR. ELLISON: So Duke signed the
22 agreement within the required time period, is that
23 correct?

24 MR. BARRENO: Yes, that's correct.

25 MR. ELLISON: That's all I have. The

1 witnesses are available for examination.

2 PRESIDING MEMBER MOORE: Mr. O'Brien has
3 a clarification question for your panel.

4 MR. O'BRIEN: Mr. Jones, a question for
5 you. You mentioned that Southern California
6 Edison had a different rating system than PG&E.
7 And that PG&E's system is more conservative.

8 Is that a correct understanding on my
9 part?

10 MR. JONES: Yes.

11 MR. O'BRIEN: And can you briefly
12 explain the reason that PG&E system is so much
13 more conservative than Southern California
14 Edison's?

15 MR. JONES: I don't really know the
16 answer to that. I could probably guess. But --

17 PRESIDING MEMBER MOORE: Well, we don't
18 want you to guess. If you have knowledge of it,
19 then say that. And right now all you can say is
20 that they are different?

21 MR. JONES: Well, let me just say that
22 when the first process of calculating these
23 numbers came out, which was in the mid 50s, late
24 50s, this was based on a monograph made by the
25 Alcoa Aluminum Company that solved the problem of

1 the heat balance on a line. That the heat being
2 created by the current inside the line was
3 balanced by the heat off the line from convection
4 conduction and radiation. I think you have to
5 throw solar heat gain in there, too.

6 And so you're looking for an equilibrium
7 condition and then you specify certain things.
8 You specify certain characteristics of the
9 conductor, operating temperatures you feel
10 comfortable with. And one of the choice items was
11 the two-foot-per-second wind, which was one of the
12 elements that was in the original paperwork that
13 was done.

14 And I am familiar with this because I'm
15 the one who wrote the first digital computer
16 program to recalculate these numbers.

17 And what you're doing is you're using
18 basically what the Alcoa book put out in front of
19 you and said, this is what we recommend. Doesn't
20 mean you couldn't do something else. It was just
21 what they were giving you.

22 PG&E based their numbers, their
23 calculations on these assumptions. And this went
24 on for a long, long time. And I think that people
25 knew these numbers were a little bit conservative.

1 i just presume that Edison just wanted
2 to, you know, take a little margin out of it in
3 order to get more capacity on their lines by
4 raising the operating conductor, the temperature
5 another 10 degrees C. And they have higher
6 numbers.

7 And I can recall as early as in the late
8 '60s that we were familiar with that. We had
9 copies of their numbers and then there was a
10 little conversation about why their numbers were
11 higher than ours.

12 But since the lines weren't too loaded
13 in that time people don't get too interested.
14 When it gets to the point where you start thinking
15 about spending, well, building brand new lines,
16 taking new rights away, reconductoring lines then
17 you get interested in what could happen.

18 And I know they did run studies to
19 determine whether rerating appeared to be an
20 appropriate way to go.

21 MR. O'BRIEN: And one other question.
22 If, in fact, these lines, the three lines you
23 talked about emanated from the Morro Bay Power
24 Plant were, instead of owned by PG&E, were owned
25 by Edison and Edison was using a different

1 criteria than PG&E, in fact those three lines
2 would have a higher rating? In other words they
3 could carry additional capacity, if you will, is
4 that correct?

5 MR. JONES: That's correct.

6 PRESIDING MEMBER MOORE: Mr. Valkosky.

7 HEARING OFFICER VALKOSKY: Mr. Jones,
8 are you familiar with the conditions staff
9 proposed for the two transmission topics?

10 MR. JONES: Yes, sir.

11 HEARING OFFICER VALKOSKY: Are you
12 proposing changes to any of them, specifically to
13 condition TSE2?

14 MR. JONES: I don't believe so. Now
15 TSE2 relates to the work that's going to be done
16 in the yard, I believe.

17 HEARING OFFICER VALKOSKY: Okay, but you
18 are satisfied with the language as it appears in
19 staff's proposal?

20 MR. JONES: Yes.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you. Staff?

23 MS. HOLMES: Staff has no questions.

24 PRESIDING MEMBER MOORE: The City?

25 MR. SCHULTZ: No cross-examination.

1 PRESIDING MEMBER MOORE: And from the
2 intervenors, CAPE?

3 MS. CHURNEY: Yes.

4 CROSS-EXAMINATION

5 BY MS. CHURNEY:

6 Q Mr. Jones, you indicate that Cal ISO has
7 accepted rerating and provision of a special
8 protection scheme, SPS, if necessary. How and
9 when will it be determined whether an SPS is
10 necessary?

11 A My understanding is that's something
12 that the ISO and PG&E are working out right now.

13 Q Okay, so your understanding is that
14 currently there's nothing worked out?

15 A Well, conceptually you know what you
16 want to do. The nuts and bolts is another -- in
17 other words they agree that this is the way
18 they're going to handle the problem.

19 You can have a major condition where
20 you're going to have to drop generation, or even a
21 minor problem where you have to reduce generation.

22 Q And for clarification what is the
23 difference between an SPS and a remedial action
24 scheme?

25 A I don't know, about six months, I guess.

1 (Laughter.)

2 MR. JONES: It was RMS or RAS for
3 several years; and then all of a sudden one day it
4 became SPS. And I said what's SPS. And they
5 said, oh, it's RAS. I said well, why didn't you
6 say RAS. Well, we changed our mind, we call it
7 special protection scheme.

8 BY MS. CHURNEY:

9 Q So it's one and the same?

10 A As far as I can tell.

11 Q Will the SPS or RAS be determined solely
12 by PG&E?

13 A No, not at all, because it's associated
14 with the production, so it's going to be something
15 to be worked out with the operators, which
16 essentially is the CA-ISO.

17 Q Do you have any knowledge as to whether
18 this is a high priority item with Cal-ISO and
19 PG&E?

20 A We've been told they're committed to get
21 it done and have it ready for the project. So
22 there's no reason to believe that they wouldn't.
23 They've done it in the past for other projects.

24 Again, there's nothing unique about
25 Morro Bay. No, I just said that and that's not

1 true. Maybe one thing that's unique about Morro
2 Bay is they already have a remedial action scheme.
3 They're already part of a remedial action scheme
4 associated with how power flows north, I believe.

5 But I don't -- there's no reason to
6 believe that this isn't going to happen. I mean I
7 think it's just a matter of sitting down and
8 getting it done. Nothing unique.

9 Q Well, let me give you a hypothetical.
10 What happens if the study this summer is either
11 not conducted or the results do not support the
12 rerating contemplated, or Cal-ISO does not support
13 the rerating as contemplated, what would happen?

14 A Well, now you're giving me a
15 hypothetical question. You're saying what if the
16 people don't do what they said they were going to
17 do, and what they're supposed to do.

18 Well, I don't know. I guess somebody's
19 going to holler at them.

20 Q Well, no, actually the question really
21 goes more to the results. What if the results
22 don't justify the rerating? I mean is Duke
23 irrevocably bound to comply with whatever SPS may
24 be developed in that case?

25 A I'm not sure I understand the question.

1 PRESIDING MEMBER MOORE: Well, let me
2 see if I can rephrase it. If the study comes out
3 and says that rerating is not acceptable, what
4 then happens, what's the reaction of the company
5 to that?

6 MR. JONES: Well, first of all it's not
7 going to happen.

8 PRESIDING MEMBER MOORE: What if it did?

9 MR. JONES: So we're back in a
10 hypothetical again. Okay, if it did, then the
11 company has alternative. There are other
12 alternatives to accommodating this.

13 You could engage, if you felt like it,
14 in reconductoring some of the wire. You could
15 operate at a lower level.

16 PRESIDING MEMBER MOORE: Are those all
17 the alternatives?

18 MR. JONES: I'm sorry?

19 PRESIDING MEMBER MOORE: Are those all
20 the alternatives?

21 MR. JONES: Well, there's not too many
22 things you can do. You're either going to have a
23 rating that you can live with one way or another;
24 or you're going to reduce generation upon some
25 contingency.

1 For the normal case you're going to have
2 to deal with it. You're going to have to face it,
3 you're going to have to look it in the eye and
4 deal with it. Because you're not going to want to
5 operate your plant at reduced output on a normal
6 basis.

7 PRESIDING MEMBER MOORE: Counsel.

8 BY MS. CHURNEY:

9 Q In your analysis did you consider what
10 the impact of PG&E's bankruptcy is on the
11 maintenance of the existing transmission lines and
12 how that might impact rerating?

13 A No.

14 Q Do you know whether PG&E has, in fact,
15 already cut back on its maintenance of the lines
16 because of the bankruptcy?

17 A I don't know the answer to that. But
18 remember, we're not talking about routine
19 maintenance, we're talking about a special program
20 to determine what's required to go ahead and do
21 the rerate. So it's not one of the run of the
22 mill patrols, or maintenance programs they have.
23 It's something in addition to that.

24 Q Do you have any personal knowledge of
25 PG&E's history of fire hazards from their lines

1 even before the bankruptcy, as compared to
2 Southern California Edison or San Diego power?

3 MR. ELLISON: Objection, relevance.

4 MS. CHURNEY: Well, the witness made the
5 comparison in his testimony.

6 PRESIDING MEMBER MOORE: Why don't you
7 rephrase the question. I think Mr. Ellison's
8 right the way it's phrased.

9 BY MS. CHURNEY:

10 Q Do you have any knowledge of PG&E's
11 history of the fire hazards along their lines as
12 compared to Southern California Edison or San
13 Diego power?

14 MR. ELLISON: Same objection, and for
15 the record, Mr. Jones did not testify to any
16 comparison between Edison and PG&E with respect to
17 fire hazards.

18 PRESIDING MEMBER MOORE: Well, he did
19 use the phrase in terms of the hazard. I'm going
20 to let him answer. Did you have any knowledge of
21 that?

22 MR. JONES: Of general transmission line
23 problems as far as fires go?

24 PRESIDING MEMBER MOORE: With SCE or San
25 Diego Gas and Electric?

1 MR. JONES: No, I don't.

2 PRESIDING MEMBER MOORE: Counsel.

3 BY MS. CHURNEY:

4 Q Do you know whether PG&E and Southern
5 California Edison maintain their lines equally
6 well?

7 A For sure, no, I don't know that.

8 Q Why does Duke prefer a congestion
9 management scheme as mitigation for the emergency
10 overload on the San Luis Obispo/Atascadero 70 kV
11 line, but disfavors congestion management on
12 mitigation for the Morro Bay/Templeton line?

13 A I don't think it's that simple. I think
14 what you said isn't really that simple.

15 First of all, congestion management, I
16 love it because you do it for an emergency
17 condition, and we're not going to congestion
18 management for a normal problem. For a normal
19 problem we're going to find a solution. And the
20 solution is going to be that we're going to rerate
21 the line.

22 Now, for an emergency condition what are
23 you going to do. Well, the thing I like about the
24 emergency condition, probably ain't going to
25 happen. It's going to happen once in 40 years or

1 twice in 40 years. And so you can be a little
2 more frisky about what kind of solution you're
3 looking for.

4 And so you look for a solution like a
5 RAS scheme, because you, okay, I have to turn off
6 a little bit of generation for a certain period of
7 time when I have an outage. What's going to
8 happen, once every five years? Once in every ten
9 years? Once every 20 years? It's easy to do, and
10 it doesn't cost anybody a lot of money. And it
11 doesn't cost anybody a lot of grief.

12 These are good solutions for the --

13 PRESIDING MEMBER MOORE: Actually, Mr.
14 Jones, the question was do you have a preference
15 for congestion management of one type on one line
16 versus another.

17 MR. JONES: No, I don't.

18 PRESIDING MEMBER MOORE: And have you
19 recommended such a preference for the Templeton
20 line versus the other line?

21 MR. JONES: I wasn't aware that we did.

22 PRESIDING MEMBER MOORE: All right.

23 Counsel.

24 BY MS. CHURNEY:

25 Q And reviewing and discussing Mr.

1 Boatman's testimony you indicated that you
2 disagreed with his assertion that operating the
3 Morro Bay/Templeton line during the hot summer
4 months in a rerated mode will increase fire hazard
5 conditions.

6 And I believe you indicated that that
7 wasn't a concern to you because, as you stated,
8 PG&E will have done what is necessary to be done
9 so that it won't be dangerous. And you cited some
10 examples, such as infrared scoping.

11 What personal knowledge do you have that
12 PG&E will do this? And at some point in the
13 future?

14 A It's what they do. It's all part of the
15 package. The first thing they are going to do is
16 they are going to do, they're going to go in the
17 field and they're going to do this work to
18 determine whether they feel comfortable with doing
19 a rerate.

20 And I believe, based on past experience,
21 they're going to come back and say, this is fine,
22 and maybe we have to raise a tower here or there.
23 Or maybe we have to trim a tree here or there.

24 Then it's their responsibility in the
25 future to go out and maintain lines; do the

1 infrared scans on whatever frequency basis they
2 have; and also to do their right-of-way clearing
3 and their tree trimming.

4 Now, it's not unique to this line. They
5 have this same problem, or this same
6 responsibility with every other transmission line
7 in their system.

8 And there's no reason for me to think
9 they won't do it. They've been doing it in the
10 past. They've been doing a good job, and I think
11 they'll continue to do it.

12 Q So your comfort level with this is based
13 upon what you believe they'll do in the future?

14 MS. CHURNEY: That mischaracterizes his
15 response.

16 PRESIDING MEMBER MOORE: I agree with
17 that. And, besides that, it's asking the question
18 twice. I think that the answer was pretty clear,
19 counsel. Keep going.

20 BY MS. CHURNEY:

21 Q You indicated that there will be a
22 remedial action scheme. What remedial action
23 scheme will be implemented here?

24 A It's outlined in the interconnection
25 study. And for a Morro Bay/Templeton line out you

1 get the 70 kV overloading from San Luis Obispo to
2 Atascadero.

3 And so what's going to be or what is
4 proposed and what is supposedly to be accommodated
5 is that there will be a reduction in generation at
6 the power plant, assuming that we have that
7 condition.

8 If the power plant is not generating to
9 a level where it's necessary, then it doesn't need
10 to be done. If the load on the line isn't high
11 enough that it warrants it, then it won't be done.

12 Q Well, with respect to your comments on
13 paragraph seven of Mr. Boatman's declaration, did
14 you compare the PSA with the FSA relative to that
15 language that's quoted in paragraph seven?

16 A Well, I thought we read them both, yes.

17 PRESIDING MEMBER MOORE: Did you?

18 MR. JONES: Yes.

19 PRESIDING MEMBER MOORE: The answer is
20 yes.

21 BY MS. CHURNEY:

22 Q And did you detect any discrepancy
23 between what was contained in the PSA and the FSA?

24 A Excuse me, just take a second here.

25 (Pause.)

1 BY MS. CHURNEY:

2 Q And specifically with respect to
3 rerating or reconductoring or rerating and
4 reconductoring.

5 (Pause.)

6 PRESIDING MEMBER MOORE: I'm sorry,
7 counsel, do you want to repeat the question? I'm
8 not keeping it in my mind.

9 MS. CHURNEY: Sure.

10 Well, I'll represent that there is a
11 discrepancy between the PSA and the FSA, and I
12 just was wondering whether staff had -- why the
13 staff came up with different language from the PSA
14 to the FSA with respect to rerating --

15 PRESIDING MEMBER MOORE: So, you're
16 asking whether the applicant's consultant noted
17 the discrepancy?

18 MS. CHURNEY: Right. And whether it
19 impacted his analysis.

20 MR. ELLISON: Let me clarify something
21 here. One question I just heard was a question as
22 to why the staff made that change. And obviously
23 the applicant's witnesses are not the appropriate
24 ones to comment on that.

25 PRESIDING MEMBER MOORE: That's right.

1 MR. ELLISON: Secondly, I would object
2 on the basis that if the only point is that the
3 documents are different, the documents speak for
4 themselves.

5 And lastly, I would say that by
6 definition the preliminary staff assessment is
7 preliminary.

8 PRESIDING MEMBER MOORE: I concur.

9 MR. ELLISON: And so --

10 PRESIDING MEMBER MOORE: So, let me
11 just, let's see if we can refine this and keep
12 going because this is not helping, this instant
13 line of inquiry.

14 Did you notice a discrepancy between the
15 two documents?

16 MR. JONES: Yes, I did.

17 PRESIDING MEMBER MOORE: And did you
18 take that into account?

19 MR. JONES: Of course.

20 PRESIDING MEMBER MOORE: Counsel.

21 MS. CHURNEY: No further questions.

22 PRESIDING MEMBER MOORE: Thank you. All
23 right, is there any redirect?

24 MR. ELLISON: Yes, just one. Just one
25 question.

1 REDIRECT EXAMINATION

2 BY MR. ELLISON:

3 Q Mr. Jones, at one point in response to
4 cross-examination you drew a distinction between
5 how one would respond to an overload in a normal
6 condition versus how you might respond to an
7 overload for an emergency or some sort of
8 contingency condition.

9 And with respect to the emergency or
10 contingency condition you made a statement that
11 you might be, I believe the word you used was a
12 little more frisky, about how you would respond to
13 that.

14 By frisky did you mean that you would be
15 more willing to accept a reduction in generation
16 from the developer's point of view if you knew
17 that it was unlikely to occur very often, than you
18 would if you thought it was going to occur under
19 normal conditions?

20 A Yes, or course.

21 Q And by frisky did you mean anything more
22 than that? For example, did you mean that somehow
23 people would take more chances with public health
24 and safety in that circumstance than they would in
25 a different circumstance?

1 A No, not at all. You're just simply
2 dealing with a low probability occurrence.

3 MR. ELLISON: That's all I have, thank
4 you.

5 PRESIDING MEMBER MOORE: Recross?

6 MS. CHURNEY: No, thank you.

7 PRESIDING MEMBER MOORE: All right,
8 seeing none, is there any public testimony on --

9 HEARING OFFICER VALKOSKY: Mr. Ellison,
10 does that conclude the applicant's presentation on
11 both the transmission line safety and nuisance,
12 and the transmission system engineering topics?

13 MR. ELLISON: Yes, it does.

14 HEARING OFFICER VALKOSKY: Thank you.

15 PRESIDING MEMBER MOORE: Thank you,
16 gentlemen. Let me then turn to staff and ask, you
17 have, if I understand correctly, one witness who
18 will be effectively testifying on both items?

19 MS. HOLMES: We have a witness for
20 transmission line safety and nuisance that's a
21 substitute for the witness that was listed in the
22 FSA. It's the same witness who's going to be
23 testifying on transmission system engineering.

24 We also have Mr. Johan Galleberg from
25 the ISO. I thought it might make sense to cover

1 transmission line safety and nuisance,
2 transmission system engineering and the ISO
3 testimony at one time as a panel, so --

4 PRESIDING MEMBER MOORE: As a panel,
5 that's exactly where I was going. Let's bring
6 both of your witnesses up then and have them sworn
7 in.

8 MS. HOLMES: Thank you.

9 Whereupon,

10 RICHARD MINETTO and JOHAN GALLEBERG
11 were called as witnesses herein, and after first
12 having been duly sworn, were examined and
13 testified as follows:

14 DIRECT EXAMINATION

15 BY MS. HOLMES:

16 Q Could you please state your names for
17 the record?

18 MR. GALLEBERG: My name is Johan
19 Galleberg, J-o-h-a-n, Galleberg is
20 G-a-l-l-e-b-e-r-g. And I'm with the California
21 ISO.

22 MR. MINETTO: My name is Richard
23 Minetto. M-i-n-e-t-t-o. And I'm working for RM
24 Engineering, a subsidiary or a subcontractor to
25 Aspen, as consultants to the Staff of the

1 California Energy Commission.

2 MS. HOLMES: I'll start with Mr.

3 Minetto.

4 BY MS. CHURNEY:

5 Q Mr. Minetto, are you familiar with the
6 transmission line safety and nuisance testimony
7 that was filed as part of exhibit 115?

8 A Yes, I am.

9 Q And are you also familiar with the
10 transmission system engineering testimony that was
11 filed as part of exhibit 115?

12 A Yes, I am.

13 Q With respect to the latter, did you help
14 prepare that testimony?

15 A Yes, I did.

16 Q And with respect to the former have you
17 read through that testimony and now adopt it as
18 your own?

19 A Yes, I do.

20 Q Was a copy of your qualifications
21 included in the supplemental testimony exhibit
22 116?

23 A Yes, I believe it was.

24 Q And now I'd like to ask just one or two
25 questions so that you can explain to the Committee

1 and the other parties here about your
2 qualifications to also take on the additional
3 topics of transmission line safety and nuisance.

4 Could you please briefly summarize the
5 experience and the qualifications that you have in
6 that area?

7 MR. MINETTO: Yes. I worked for Sierra
8 Pacific Power Company for approximately 22 years,
9 ranging in activities from transmission line
10 planning, substation design, construction,
11 district engineering and standards and material
12 development.

13 Specific to transmission line safety and
14 nuisance the areas that covers primarily fell
15 under the category when I was doing mainly
16 standards and material where we did
17 specifications; primarily along those same lines I
18 was also on an EMF task force for Sierra Pacific
19 Power Company for approximately three and a half
20 years.

21 While I was in transmission planning we
22 did operations; we did studies on things such as
23 fire hazard, transmission line safety, right-of-
24 way, tree clearing, those kinds of activities.

25 And when I was in the districts doing

1 field operations I was responsible for 60 kV and
2 120 kV transmission line operations, maintenance
3 and construction.

4 MS. HOLMES: Thank you. Mr. Galleberg,
5 did you prepare the transmission system
6 reliability testimony of the ISO that's been
7 identified as exhibit 120?

8 MR. GALLEBERG: Yes, I did.

9 MS. HOLMES: And was a statement of your
10 qualifications and education included in that?

11 MR. GALLEBERG: Yes.

12 MS. HOLMES: And now I'd like to ask
13 both of you if the facts contained in your
14 testimony are true and correct?

15 MR. GALLEBERG: Yes.

16 MR. MINETTO: Yes, they are.

17 MS. HOLMES: And do the opinions
18 contained in your testimony represent your best
19 professional judgment?

20 MR. GALLEBERG: Yes.

21 MR. MINETTO: Yes, they do.

22 MS. HOLMES: Thank you. I'd like to
23 start with a question to Mr. Minetto about
24 rerating. There's been some discussion that I'm
25 sure you've just heard about the rerating

1 testimony that staff filed.

2 Is it your understanding that the
3 mitigation measures that the applicant has
4 selected is to rerate the lines?

5 MR. MINETTO: Yes, that's my
6 understanding.

7 MS. HOLMES: And do you believe that
8 that rerating is likely to be feasible?

9 MR. MINETTO: I believe it is.

10 MS. HOLMES: If rerating is not feasible
11 do you know whether or not reconductoring would be
12 selected as an alternative measure?

13 MR. MINETTO: Actually I can't conclude
14 that at this time. The final staff assessment
15 clearly states that all mitigation would be
16 considered should the rerate not be proven to be
17 feasible.

18 And in fact reconductoring may not be
19 considered the preferred alternative due to other
20 environmental impacts.

21 MS. HOLMES: Will the staff and the
22 Commission be aware of whether rerating works and
23 if it doesn't what the ultimate selection of a
24 mitigation measure is?

25 MR. MINETTO: Yes. Under condition of

1 certification TSE5G, we have requirements for the
2 applicant to submit the rerating study and to
3 consider other alternative mitigation strategies
4 should it not be proven feasible.

5 MS. HOLMES: Thank you. And I have one
6 or two questions to address to Mr. Galleberg in
7 response to some concerns that have been raised
8 about sabotage and terrorist attacks on the Morro
9 Bay project.

10 Mr. Galleberg, in normal circumstances
11 would the sudden complete loss of the Morro Bay
12 generation cause a systemwide disruption?

13 MR. GALLEBERG: No. The system is
14 designed and operated in a way so that it could
15 sustain the loss of the most critical generation
16 unit in southern California ISO, in addition to
17 the outage of a major transmission line.

18 MS. HOLMES: In the scenario that I just
19 discussed, do you know whether or not local load
20 would necessarily be dropped?

21 MR. GALLEBERG: It could be, but not in
22 the case of Morro Bay.

23 MS. HOLMES: Thank you. The witnesses
24 are available for cross-examination.

25 PRESIDING MEMBER MOORE: Thank you very

1 much. Questions up here? Stan?

2 HEARING OFFICER VALKOSKY: For either of
3 the witnesses, do you know whether the
4 environmental impacts of the reconductoring
5 alternative have been analyzed in the final staff
6 assessment?

7 MR. MINETTO: No, they have not.

8 HEARING OFFICER VALKOSKY: Okay, so to
9 paraphrase then, if reconductoring was, in fact,
10 the only acceptable alternative derived at
11 pursuant to the conditions, an independent
12 analysis of those impacts would, in fact, have to
13 take place?

14 MR. MINETTO: That's correct.

15 HEARING OFFICER VALKOSKY: Thank you.

16 PRESIDING MEMBER MOORE: Thank you. The
17 applicant? Cross-examination?

18 MR. ELLISON: No questions.

19 PRESIDING MEMBER MOORE: The City?

20 MR. SCHULTZ: No questions.

21 PRESIDING MEMBER MOORE: For the
22 intervenor CAPE?

23 MS. CHURNEY: I would just like to note
24 for the record that the intervenor has not been
25 served with exhibit 120. And we just detected

1 this now, so we will be cross-examining somewhat
2 at a loss, and would like to get a copy of that as
3 quickly as possible.

4 HEARING OFFICER VALKOSKY: Exhibit 120
5 was, at least according to my notes, filed mid
6 November.

7 PRESIDING MEMBER MOORE: November 15.
8 I'm at a loss to explain that. My list would
9 suggest that you were given that in the normal
10 course of events. I will make sure a copy gets to
11 you from the ISO if we can make another copy
12 available. I'm simply at a loss. I don't know
13 why you wouldn't have been served.

14 Do you have questions, counsel?

15 MS. CHURNEY: I do. For Mr. Galleberg
16 first.

17 CROSS-EXAMINATION

18 BY MS. CHURNEY:

19 Q Has Cal-ISO ever had occasion to
20 question the pricing practices of Duke during
21 congestion on path 15?

22 MR. GALLEBERG: I'm not an expert on
23 congestion and pricing policy.

24 MS. CHURNEY: Of the three mitigation
25 alternatives identified in the SIFS does Cal-ISO

1 have any preferences as to those three mitigation
2 alternatives?

3 MR. GALLEBERG: No, we don't. We would
4 prefer the cheapest, and that would be the rerate
5 if that's feasible.

6 MS. CHURNEY: And if that's not feasible
7 is there any preference?

8 MR. GALLEBERG: No, then it's up to the
9 applicant.

10 MS. CHURNEY: Does Cal-ISO believe that
11 path 15 congestion will continue to happen in the
12 future?

13 MR. GALLEBERG: For the next few years
14 it may happen. There is a project in place in a
15 few years to add another 500 kV line that should
16 help to relieve the congestion. But I can't
17 guarantee that that will happen.

18 MS. CHURNEY: Would reconductoring
19 relieve path 15 congestion? Reconductoring
20 between the Morro Bay and the Templeton line?

21 MR. GALLEBERG: No, it will not have any
22 effect on path 15.

23 MS. CHURNEY: And for Mr. Baretto --

24 MR. MINETTO: Minetto.

25 MS. CHURNEY: -- oh, Minetto, sorry. In

1 the FSA at page 3.7-7 staff states, therefore
2 staff considers the use of the system during
3 project operation as potentially safe with regard
4 to these aviation, safety, fire hazards and
5 hazardous shocks, impacts.

6 Has staff considered this not being the
7 case?

8 MR. MINETTO: Where are you reading
9 that?

10 MS. CHURNEY: I'm sorry, page 3.7-7.

11 MR. MINETTO: What paragraph?

12 MS. CHURNEY: It's the last complete
13 sentence on the page. The last two sentences
14 rather.

15 MR. MINETTO: Staff believes because
16 they're designed in accordance with PG&E
17 guidelines, which does meet required LORS, that
18 the installation, since it doesn't require any
19 downstream facilities, would be considered safe.

20 MS. CHURNEY: Has staff considered other
21 alternatives if this system proves not to be safe?

22 MS. HOLMES: I think I'm going to just
23 ask for a clarification, alternatives to what?

24 PRESIDING MEMBER MOORE: Your
25 clarification is well founded. I don't understand

1 the question.

2 MS. CHURNEY: I'll withdraw the
3 question.

4 BY MS. CHURNEY:

5 Q What has staff considered in terms of
6 safety related conditions relative to the rerating
7 of the lines?

8 MR. MINETTO: With regard to the
9 rerating process, again under transmission line
10 safety and nuisance since there are no downstream
11 facilities the rerating project, in and of itself,
12 doesn't create any additional concerns from the
13 staff's standpoint.

14 From the transmission system engineering
15 perspective, the rerating process, in and of
16 itself, does require and required under current
17 California law, under GEO95, transmission lines
18 are required to be inspected and maintained in
19 accordance with those requirements in order to
20 meet safety and to meet clearance standards.

21 So, from both the standpoint of
22 transmission system engineering, as well as safety
23 and nuisance, rerating, in and of itself, doesn't
24 create any additional hazards and is considered
25 safe.

1 MS. CHURNEY: Has staff investigated
2 whether PG&E is continuing to maintain and monitor
3 its lines?

4 MR. MINETTO: PG&E is required under
5 GEO95 to inspect and maintain lines in accordance
6 with California law.

7 MS. CHURNEY: I understand that. But
8 has staff investigated to see whether they're
9 continuing to do so during the course of their
10 bankruptcy?

11 MR. MINETTO: No.

12 MS. CHURNEY: What would be the
13 potential impact of overloaded lines with
14 increased megawattage generation over and above
15 the 1200 megawatts in terms of fire hazards or
16 hazardous shocks, if you know?

17 MS. HOLMES: I'm sorry, again, it seems
18 that there were a lot of assumptions in the
19 question. If you could break it down into more
20 pieces and build on it, I think it would be
21 helpful for the witness.

22 MS. CHURNEY: Are you assuming a nominal
23 1200 megawatts in making your assessment?

24 MR. MINETTO: The loads, as modeled by
25 PG&E in the system impact and facility study,

1 which is a nominal 1200 megawatt power plant.

2 MS. CHURNEY: Would it make a difference
3 to your assessment if it goes above that, above
4 1200 megawatts?

5 MR. MINETTO: Actually I believe the
6 system impact study modeled it at slightly higher
7 output levels.

8 MS. CHURNEY: On page 4.5-7 of the FSA
9 regarding system impact facility study staff
10 states: Staff is concerned that DENA waited to
11 sign the generator's special facilities agreement
12 because this agreement initiates mitigation
13 required for the project interconnect.

14 What was staff's concerns in this
15 regard?

16 MR. MINETTO: The main concern in that
17 regard was that in order to initiate the rerating
18 project and get the study underway the GSFA needed
19 to be signed. And so by delaying the signature of
20 the GSFA it just delayed probably the project
21 results for the rerating.

22 MS. CHURNEY: How can staff determine
23 the adequacy of all feasible mitigation measures
24 identified to this point, since there's no clear
25 assurance the rerating will be adequate at this

1 point?

2 I mean is your assessment necessarily a
3 preliminary assessment at this point?

4 MS. HOLMES: Again, I'm going to ask for
5 clarification as to what she's asking --

6 PRESIDING MEMBER MOORE: Yeah, I think
7 that's -- counsel, I think that's why you just
8 hear stunned silence around, is that the question
9 is not coming through clearly.

10 Do you want to break it into pieces and
11 ask it --

12 MS. CHURNEY: Sure.

13 PRESIDING MEMBER MOORE: -- ask it
14 again?

15 MS. CHURNEY: Duke selected rerating of
16 the overloaded lines as its proposed mitigation
17 measure. But that depends on future engineering
18 results is my understanding in the FSA.

19 How can staff know at this point that
20 this will be adequate or feasible?

21 MR. GALLEBERG: We modeled it in
22 simulation cases; we simulated different
23 mitigation options. So that's the way we can make
24 sure they are feasible and will take care of the
25 problem.

1 MR. MINETTO: With regard to the
2 rerating it's staff's position that the rerating
3 is considered feasible.

4 MS. CHURNEY: And what's the basis for
5 that determination?

6 MR. MINETTO: The basis for that
7 determination is along the lines Mr. Jones
8 mentioned. PG&E has done this, in fact PG&E has
9 several lines right now that they're going through
10 a rerating process with.

11 Also, research done indicates that the
12 wind speed in the Morro Bay area will more than
13 likely substantiate a four-feet-per-second wind
14 speed to be used in the rerating process.

15 MS. CHURNEY: What about in Templeton,
16 have you --

17 MR. MINETTO: Yes, in the Templeton and
18 the Morro Bay areas the research indicated it's
19 more than likely going to meet the requirements.

20 MS. CHURNEY: Why aren't all potential
21 mitigation measures for transmission impacts
22 assessed, investigated and evaluated now? Such as
23 reconductoring.

24 MR. MINETTO: The applicant has selected
25 the rerating. It's a mitigation strategy that

1 PG&E and the California ISO consider adequate and
2 appropriate.

3 MS. CHURNEY: But isn't it staff's duty
4 to consider all potential mitigation?

5 MS. HOLMES: I'm going to object to that
6 question. I think that counsel is getting to
7 questions of a legal nature, which we can address
8 in briefs if the Committee directs us to about
9 staff's responsibilities under CEQA.

10 PRESIDING MEMBER MOORE: Well, actually,
11 I think just procedurally you don't even need to
12 go to the legal point. The ISO indicated that in
13 the decision tree it was the responsibility of the
14 applicant to pick one. And they did. All others
15 being of equal value. That would presume that the
16 staff does not have to analyze those in
17 alternative, that level has been taken care of
18 elsewhere.

19 MS. CHURNEY: Has staff considered the
20 elimination of duct firing as a feasible
21 mitigation measure for transmission impacts?

22 MR. MINETTO: No.

23 MS. CHURNEY: I have no further
24 questions.

25 PRESIDING MEMBER MOORE: Thank you.

1 Then redirect.

2 MS. HOLMES: No questions.

3 PRESIDING MEMBER MOORE: All right, with
4 that then the -- I'm sorry, Mr. Valkosky has a
5 question for these witnesses.

6 HEARING OFFICER VALKOSKY: Yeah. Mr.
7 Minetto, could you look at condition TSE2 at page
8 4.5-11, and this is just for my own understanding.

9 You list four engineers there who will
10 be assigned to the project. And go down to right
11 before mechanical engineer, sub (d). Is that
12 condition supposed to be read in the conjunctive
13 or the disjunctive?

14 In other words should the "or" be an
15 "and" so that all four of the engineers would be
16 assigned? Or does the mechanical engineer
17 supplant the need for the previous three
18 engineers?

19 MR. MINETTO: It should read "and".

20 HEARING OFFICER VALKOSKY: Thank you.

21 Ms. Holmes, did you move your documents?

22 MS. HOLMES: No, but I'd like to.

23 HEARING OFFICER VALKOSKY: Please do.

24 MS. HOLMES: At this point I'd like to
25 request that the transmission system engineering

1 and transmission line safety and nuisance portions
2 of exhibit 115 and 116, as well as exhibit 120 be
3 entered into evidence.

4 PRESIDING MEMBER MOORE: Objections?
5 Any objections?

6 MS. CHURNEY: I object because we have
7 not received exhibit 120.

8 PRESIDING MEMBER MOORE: Is that the one
9 we just -- the ISO testimony. All right. I'm
10 going to allow them to be moved in and make sure
11 that the intervenors get a copy of it.

12 And I'd also like to find out if -- I'd
13 like a report back on what's happening to the
14 mail. So maybe we can ask the Public Adviser to
15 give us, or dockets to give us a report back on
16 whether or not these are, in fact, being served.

17 All right, it's going to be so ordered
18 with that caveat.

19 CAPE, you have a witness, Mr. Boatman.

20 MS. CHURNEY: Yes.

21 PRESIDING MEMBER MOORE: And these
22 witnesses are excused. Thank you.

23 And if you'll bring your witness forward
24 to be sworn.

25 //

1 Whereupon,

2 DON BOATMAN

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 PRESIDING MEMBER MOORE: Counsel.

7 MS. CHURNEY: Yes.

8 DIRECT EXAMINATION

9 BY MS. CHURNEY:

10 Q Mr. Boatman, could you briefly state
11 your background, please.

12 A I have 40 years experience in the
13 electrical industry; 30 years at PG&E; and the
14 last ten doing various work in power plant testing
15 and construction.

16 Q And, Mr. Boatman, you have prepared a
17 written declaration for submittal in this matter,
18 have you not?

19 A Yes, I have.

20 Q And do you have any additions or
21 corrections to make to that declaration?

22 A I have a couple of corrections. One of
23 the things I never learned very well is typing.
24 On page 3, on paragraph seven, down about one,
25 two, three, four, five lines I start out: Duke's

1 proposed mitigation of the Morro Bay/Templeton
2 line proposes only to rerate the line, not
3 reconductor, as one of the specified
4 recommendations by Cal-ISO.

5 So I want to add that as one of the
6 recommendations specified by Cal-ISO.

7 Q All right. And are there any other
8 additions or corrections?

9 A Let me find it. There is one more. On
10 page 4, paragraph 13, right on the bottom
11 sentence: Duct firing uses 150 percent more gas
12 per 100 megawatts in the base 500 megawatt.

13 I want to change that to 30 to 50
14 percent. That "1" shouldn't have been there.

15 Q And are there any other additions or
16 corrections?

17 A No, I think that's fine.

18 Q And with those additions and corrections
19 is everything stated in this declaration true and
20 correct to the best of your knowledge?

21 A Yes, it is.

22 Q And the opinions stated in here are your
23 own, are they not?

24 A Yes, they are.

25 Q Mr. Boatman, you've listened to the

1 testimony provided by Duke's witnesses, and the
2 witnesses from staff. Do you have any comments to
3 make with respect to the issues they've raised?
4 And we can take it through your declaration, if
5 you wish, the particular paragraphs that they
6 focused on.

7 A Yes, I have some comments.

8 Q Okay. Why don't we start with paragraph
9 four, then, since that was the paragraph that was
10 focused on.

11 A That's amazingly what I turned to. The
12 words can be used in a lot of ways, as we all
13 know, but the engineer, ex-PG&E, also, said
14 that -- talked about the summer and winter ratings
15 and other things.

16 And what I wrote was while in the past
17 PG&E has temporarily rerated lines to accommodate
18 emergencies, weather conditions permitting, this
19 typically occurred in the winter when cool
20 temperatures allow more power to flow in a given
21 day, resulting in differing summer and winter
22 power ratings.

23 Because we're in the industry we know
24 that we have different normal summer and winter
25 power ratings. And maybe for this audience I

1 should have written a little more clearly that we
2 understand that one line has more than one normal
3 rating.

4 Temporary reratings are different than
5 the normal reratings of summer and winter loading
6 schedules. So I don't see a confusion there of
7 other than that I was speaking more as an industry
8 insider than a person talking to a group like this
9 maybe.

10 But, anyway, there is more than one
11 rating on a line; that is normal. But I don't
12 disagree with my statements here at all in number
13 four.

14 Q And with respect to paragraph five, do
15 you have any comments with respect to the
16 testimony that you've heard from the witnesses
17 here today, from Duke and from CEC Staff?

18 A Yes. One of my jobs for nearly the last
19 20 years at PG&E was reviewing power outages every
20 morning. All the data came to my desk. It was
21 one of my functions as a supervising technician
22 and as a general foreman.

23 PG&E regards line outages as an
24 opportunity to not only see that everything worked
25 right as far as relay systems in clearing the

1 line, but also to make sure nothing worked wrong.

2 And so I'm very aware of the outages we
3 have; the problems we've had in transmission
4 lines; the number of problems we've had. And I
5 can guarantee you that it isn't a one-in-forty-
6 year experience to see a transmission line fall to
7 the ground and start a fire.

8 The patrols that we heard about, the
9 infrared patrols and the line patrols, the foot
10 patrols that PG&E does on lines were all foot
11 patrols when I first started working with PG&E,
12 and were mostly helicopter patrols by infrared
13 toward the end of my career at PG&E, with some
14 line patrols by foot.

15 But, in this new bankrupt PG&E I don't
16 believe that the flying of the lines by infrared
17 patrol is being done as often at all as it was in
18 the past when they were a company with money and
19 more expertise. And I know that from my contact
20 with my ex-PG&E friends.

21 My statement here is a true statement.
22 Like I say, I studied the outage reports every
23 morning and I've seen that many more times than
24 one time. And I've seen it on many transmission
25 lines.

1 PG&E settled some lawsuits in northern
2 California with two or three counties about eight
3 to ten years ago because of lines falling to the
4 ground and starting forest fires due to poor
5 maintenance on the lines, on the power lines.

6 PG&E also, we talked about PG&E being
7 conservative in some of their engineering
8 practices. And the Public Utilities Commission
9 actually fined PG&E for overloading wooden pole
10 lines. They were overly nonconservative with
11 those lines. And they were snapping too often in
12 the wind and brought to the attention of the
13 Public Utilities Commission before deregulation.
14 Probably 12 to 15 years ago.

15 I think that's about all I have to say
16 about dangers. The other danger is that of course
17 you can infrared patrol a line one time and it
18 might pass. PG&E used to do it once a year. In
19 fact, sometimes they used to do it after every
20 fall when they had money. It wasn't required, but
21 it was an internal thing.

22 But patrolling a line one time by
23 infrared, and patrolling it one time by foot to
24 determine whether that line can be rerated tells
25 me that it may pass all the safety margins we need

1 for that particular time.

2 But unless a rerated line is patrolled
3 more, I suspect we're going to see more problems.

4 And from the 20 years of reading power outage
5 reports every morning, I could almost guarantee
6 it.

7 I think that's all I have about five.

8 Q Do you have any further comments with
9 respect to any of the other paragraphs in your
10 declaration, having heard --

11 A Yes.

12 Q -- having heard the testimony here
13 today?

14 A In paragraph six I mention the 100
15 degree Fahrenheit temperatures around Templeton,
16 and rerating could remove the safety factors. And
17 then I heard the testimony here that Morro Bay
18 certainly meets the wind requirement for rerating,
19 you know. In the summertime we wear jackets here.
20 I understand that. And Templeton does have some
21 wind.

22 This line goes clear to Coalinga. And
23 I've worked in Coalinga in the summertimes. And I
24 know at times there's no wind in Coalinga in the
25 summertime.

1 So rerating this line, it all has to be
2 rerated, not just the Morro Bay part, and not just
3 the Templeton part.

4 I understand from engineering that the
5 line is built for more than it's been used for for
6 the last 50 years. But, I think it takes more
7 than pencils and papers to prove that to me.

8 And I think if you do a rerate like this
9 on a 50-year old line, then you need to require
10 much more patrols. And it should be specified to
11 be helicopter and foot patrols.

12 Again, PG&E is very familiar with
13 starting forest fires. They've done a lot of
14 them. And I worked for the company for 30 years;
15 I'm a PG&E-er true and blue. But, I know the
16 facts.

17 I'd like to talk a little bit about
18 number seven, also.

19 Q Yes.

20 A Without getting my materials I can't
21 comment too much on part of the statement missing
22 in my third sentence, and so I won't comment on
23 that. But, however on that -- let's see, one,
24 two, three, four -- on the fourth sentence down,
25 however an alternative line reconductoring and/or

1 rerating, I would change "and" to "or" is
2 congestion management.

3 As I understand congestion management
4 from the ISO new congestion management is that it
5 can be done several ways. Actually if a plant
6 will allow itself to be cut back in power by
7 suggestion from the ISO that's one form of
8 congestion management. Then there are other types
9 that are relay types.

10 And so I think when we talk congestion
11 management we're talking quite a few different
12 scenarios. And congestion management, to me, in
13 the form of the ISO being able to tell the power
14 company, Duke, to back off without having to pay
15 them to back off is the proper congestion
16 management, the only congestion management that's
17 proper.

18 And maybe this isn't the place to say
19 it, but it's the only one that helps the
20 California consumers. That's a word I don't
21 normally hear in this meeting. But, we shouldn't
22 have to pay money to back off on power plants.

23 And to me that kind of mitigation is a
24 better mitigation than almost anything else.

25 And this sentence, I corrected that.

1 Okay.

2 In paragraph eight, on the last sentence
3 in that, actually it starts in the middle: Duke
4 has also refused to consider the recommended
5 mitigation suggested by Cal-ISO that would allow
6 Cal-ISO, rather than Duke, to control load. And I
7 don't mean by controls actually, but by congestion
8 management, by telephone, by something, by telling
9 Duke they have to back down.

10 As a part of this, and I didn't write it
11 here, I guess I can say things that aren't written
12 here, can't I?

13 Q Yes, I'm asking you to elaborate if
14 there's anything additionally.

15 A Okay. As a part of congestion
16 management, when PG&E owned the plant they had, at
17 least for 20 years, a contract with Modesto
18 Irrigation District. Modesto Irrigation District
19 is a municipally run electrical utility in
20 Modesto. And at times they wanted to transport
21 municipal power, to trade back and forth with the
22 Los Angeles people and their own people.

23 And they had a contract with PG&E. I
24 don't know how much money it was worth each year,
25 but they could call PG&E. PG&E would back down on

1 the Morro Bay plant to allow MID, Modesto
2 Irrigation District, to transport power back and
3 forth on path 15 when they needed to.

4 And that's the form of congestion
5 management that was reached before we had all
6 these other controlling influences. And it's
7 still necessary, but we shouldn't have to pay for
8 it. So that's all I have to say on part eight.

9 Q Do you have any further comments on any
10 of the other paragraphs in your declaration?

11 A Yes. On nine. No, actually excuse me,
12 it's on ten. The first thing is I do have the
13 newspaper article explaining this, and I'd like to
14 read a few words from that if that's okay.

15 And I'll leave it as evidence if you
16 want.

17 MR. ELLISON: Actually, before we go any
18 further down this path, CAPE has included
19 newspaper articles as part of its testimony, and
20 now proposes to read newspaper articles in as
21 evidence.

22 And my objection is that if these are
23 being introduced for the truth of the matter
24 stated therein, then I think we would prefer --

25 PRESIDING MEMBER MOORE: If the reporter

1 was here. Yeah. You know, actually that's -- I'm
2 going to sustain that. That's the right thing.

3 So I think I'm going to ask you to
4 refrain from the newspaper article. It introduces
5 a line of evidence that we can't back up directly
6 by you. So, let's stay with your opinions about
7 what you wrote and stay away from the newspaper
8 article.

9 MS. CHURNEY: Well, I would like to move
10 that the newspaper articles be accepted on notice,
11 by judicial notice, or administrative notice.

12 MR. ELLISON: We have no objection to
13 the inclusion of a newspaper articles provided
14 that it is understood that they are simply being
15 admitted for the sake of saying this is what the
16 newspaper said at the time.

17 If they are being admitted for the truth
18 of what was said, that's a different issue. That's
19 the point that I'm making.

20 HEARING OFFICER VALKOSKY: That's
21 understood. And also I'd like to clarify, we're
22 not going to take notice of them, because that's
23 not a formal official act.

24 You may refer to them if you want to say
25 that this is what I read in the newspaper, this

1 concerned me. Things like that. That is
2 different from the objection we're sustaining on
3 Mr. Ellison's behalf, which would basically come
4 down because it is printed in the newspaper it is
5 necessarily true. We will not take that latter
6 step.

7 PRESIDING MEMBER MOORE: Right, on the
8 other hand, what we have, we have a witness here
9 who has expertise in this area. Let's stay with
10 his expertise and his opinion based on that
11 expertise and that experience. And get that
12 testimony on the record where it's an elaboration
13 of what he has already written. That's fair.

14 And then we'll uncover more in the
15 cross-examination.

16 MS. CHURNEY: Well, let me ask the
17 witness this, then.

18 BY MS. CHURNEY:

19 Q What you wish to read from the newspaper
20 article, will it elaborate on your testimony here?

21 A Yes, it will, on ten, number ten.

22 PRESIDING MEMBER MOORE: Well, maybe I'm
23 somehow not getting through here. If you want to
24 submit a newspaper article that has information
25 about a topic, that's fine, we'll take it under

1 advisement.

2 What we're here to hear from this
3 witness, unless he wrote the newspaper article,
4 unless he was quoted in the newspaper article and
5 is going to back up his quote, then we'll take
6 copies of the newspaper article and we'll all read
7 them. But right now, having him refer to a
8 newspaper article written by someone else who is
9 not a witness here is not admissible.

10 So, let's go back on your questions.
11 Direct them to the witness and his expertise. And
12 we'll get the newspaper article copied and
13 submitted in docket as backup information.

14 MS. CHURNEY: Okay.

15 BY MS. CHURNEY:

16 Q Without reading from that newspaper
17 article, then, is there anything further that you
18 wish to add to paragraph ten?

19 A Yes. I'd like to talk about that. The
20 Duke spokesman that talked about not agreeing with
21 my statement at the bottom of paragraph ten, Cal-
22 ISO claimed Duke was price gouging because Duke
23 Morro Bay Power Plant was the only plant that
24 could relieve the congestion due to its strategic
25 location along the grid.

1 Randy, I forget his last name, he was
2 here, said that, of course, there was another
3 plant, Diablo Canyon Power Plant could have been
4 chosen to back down.

5 And a nuclear plant, a 1000 megawatt
6 plant, is not a load follower. It can't go up and
7 down with load like a steam plant like Morro Bay
8 can.

9 And so I don't agree -- I'm getting
10 choked up --

11 (Laughter.)

12 MR. BOATMAN: -- I don't agree with his
13 statement that there was another plant that could
14 have backed down that day. That Duke wasn't the
15 only one that got a chance to charge a million
16 dollars for shutting down for 24 hours. Diablo
17 Canyon can't shut down like that, or back off.
18 It's a baseloaded plant, it stays up 100 percent.

19 So that's one thing. Let me -- and also
20 Cal-ISO did say that, that Duke was the only plant
21 that could back down. And Duke knew it.

22 Okay, that's all I have for that one.

23 BY MS. CHURNEY:

24 Q Do you have any other comments or
25 additions --

1 A No, that's it.

2 Q Okay.

3 MS. CHURNEY: I have no further
4 questions at this time.

5 PRESIDING MEMBER MOORE: Thank you.
6 Cross-examine, Mr. Ellison.

7 CROSS-EXAMINATION

8 BY MR. ELLISON:

9 Q Mr. Boatman, let me start with where you
10 left off with respect to paragraph ten. Is your
11 understanding of the interaction between the
12 California ISO and Duke as described in that
13 paragraph based on anything other than the
14 newspaper article?

15 A Yes. I did talk to a Cal-ISO member.

16 Q Who did you speak to?

17 A I only remember his name as Jim. And
18 eventually I will come up with his last name. He
19 was in the planning department at the time. And
20 actually, I believe I talked to Jesse Winters,
21 also.

22 Q And who is Mr. Winters?

23 A He was the Director of the Cal-ISO at
24 the time.

25 Q Do you mean Terry Winters?

1 A Terry Winters, excuse me.

2 Q And when did you have that conversation?

3 A Shortly after this newspaper article.

4 Q And what did those people tell you?

5 A They confirmed what I read.

6 Q They confirmed the newspaper article?

7 A They confirmed what I read, yes.

8 Q And when you say what you read, you mean
9 the newspaper article?

10 A Yes. They claimed that they did say
11 Duke was price gouging.

12 Q Did they say to you, or does the
13 newspaper article say that Duke behaved in any way
14 outside the rules of the ISO at the time?

15 A No. They said, in fact, that they
16 needed to change the rules. Duke took advantage
17 of the rules. The rules were there, and Duke
18 played within the rules, I agree with that.

19 Q Okay. Mr. Boatman, do you consider
20 yourself an expert on air emissions and their
21 impacts from thermal power plants?

22 A I would say I don't know that I would
23 call myself an expert. I read a lot. I don't
24 know what your question is referring to.

25 Q I'm referring to the portions of your

1 testimony regarding the air pollution impacts from
2 the Morro Bay Power Plant.

3 A I don't --

4 Q And my question is are you an expert on
5 the air pollution impacts of thermal power plants.

6 A Am I an expert on the air pollution. Am
7 I talking about air pollution? Let's read this.

8 Q Let me refer you to the top of page 5 of
9 your testimony when you say: Duct firing will
10 nonetheless produce 150 percent more air
11 pollution.

12 A Yes. No, I'm not an expert. I asked
13 Gary Willey that question.

14 Q So the source of that is Mr. Willey?

15 A Yes.

16 Q Okay, well, then would you agree that
17 Mr. Willey is an expert on this topic and you are
18 not?

19 A Yes.

20 Q Incidentally, at the bottom of page 4
21 you made the correction to the increased gas use
22 associated with duct firing and changed that from
23 150 percent to 30 to 50 percent, do you see that?

24 A Yes.

25 Q Noting that the 150 percent is exactly

1 the same as the 150 percent later on air
2 pollution, is there any change in your testimony
3 with respect to the second 150 percent based on
4 the change to the first one?

5 A No. I think that's about correct.

6 Q But with respect to the air pollution
7 portions of your testimony, would you agree that
8 it would be appropriate for the Commission to rely
9 upon the expertise of the Air Pollution Control
10 District as opposed to your testimony?

11 A No, because I think what I'm saying here
12 is that duct firing is a poor energy practice due
13 to the relative inefficiency of producing the last
14 100 megawatts of power. I don't think that has
15 anything to do with air pollution.

16 Q I'm referring to your statement about
17 150 percent more air pollution that you testified
18 under oath a moment ago was based upon the
19 statement of Mr. Willey.

20 A This one that is 30 to 50 percent more,
21 you mean?

22 Q No, I'm referring to your statement
23 about air pollution on page 5.

24 A Okay, that isn't Mr. Willey. This other
25 one -- oh, excuse me, yes, it is. Okay.

1 Q So with respect to the air pollution
2 impacts of duct firing, which you have testified
3 that you were not an expert on, and that you
4 relied upon Mr. Willey, would it not be
5 appropriate for the Committee to also rely upon
6 Mr. Willey and his colleagues at the Air Pollution
7 Control District, as you have done?

8 A Mr. Willey may not have been asked this
9 question by this Commission.

10 Q During your employment history, let me
11 start with PG&E and maybe we can make this go
12 relatively quickly. Have you ever been employed
13 as a transmission planner?

14 A No. I've worked with them, but I have
15 not been a transmission planner.

16 Q And it is the transmission planners that
17 are responsible for determining the
18 interconnection of new generating facilities,
19 isn't that correct?

20 A Yes.

21 Q Have you ever, in your employment with
22 PG&E or anyone else, been responsible for
23 determining the requirements for interconnection
24 of new generating facilities?

25 A No. I think that the interconnection to

1 new generation facilities is just right here on
2 site, isn't it?

3 Q No, I'm referring to the transmission
4 system impacts of the interconnection of new
5 generation, wherever they may occur.

6 A Ask the question again?

7 Q Have you ever been employe by PG&E or
8 anyone else to be responsible for determining the
9 appropriate requirements for the interconnection
10 of new generating facilities?

11 A Well, I'm working at a generation plant
12 right now, and I'm using the PG&E handbook on
13 requirements for connecting to PG&E grid. And I'm
14 doing many of the things required by that. So I
15 know about it, yes.

16 Q No, that's not my question. My
17 question, let me phrase the question a different
18 way.

19 At PG&E or anywhere else have you ever
20 been responsible for preparing generator
21 interconnection studies such as the one that is in
22 evidence in this proceeding?

23 A No. I would say I've been responsible
24 for testing all the equipment that's required for
25 it. But I haven't been available, or I have not

1 been employed to study it. Okay.

2 Q So your employment experience is related
3 to testing the equipment and maintenance of the
4 lines and that sort of thing, isn't that correct?

5 A Relay systems, there's a close
6 interaction between the developers of the data,
7 the line planners, the line engineers, the
8 protection engineers. There's a close
9 relationship between all of us, especially in the
10 management roles.

11 So I would say that I've been more
12 involved than just testing relays or fixing
13 equipment.

14 Q But you've not been responsible for
15 transmission planning or for studying the
16 interconnection of new generation, correct?

17 A I've just tested it and proved it.

18 Q Okay. The power plant that you just
19 mentioned is -- you are employed by whom with
20 respect to that?

21 A Presently employed by Calpine.

22 Q Calpine is a competitor of Duke, is that
23 not correct?

24 A I think there's plenty to go around.

25 (Laughter.)

1 BY MR. ELLISON:

2 Q That's not the answer to my question,
3 however.

4 A Again, I don't see competition in the
5 power industry right now.

6 Q That wasn't my question, either.

7 A Okay, what was the question?

8 Q The question was is Calpine a competitor
9 of Duke?

10 MS. CHURNEY: I'll object as vague and
11 ambiguous.

12 PRESIDING MEMBER MOORE: I'm going to
13 sustain that.

14 MR. ELLISON: All right, I'll withdraw
15 it.

16 BY MR. ELLISON:

17 Q Have you ever been employed as a
18 transmission system dispatch operator?

19 A I supervised transmission operators for
20 probably four to five years right here in Morro
21 Bay. Our operation system originally, or some
22 years ago before several reorganizations, we had
23 one set of operators that operated transmission,
24 the transmission system from here to Gates, to the
25 San Joaquin Valley, to Santa Ynez, to Santa Maria.

1 We did all the transmission and all the
2 distribution. And I supervised those people,
3 actually through another supervisor, but I was
4 directly involved in the supervision of
5 operations, yes. Right here in Morro Bay.

6 Q When you say transmission system
7 operations, do you include within that the
8 dispatch of generation to, for example, avoid
9 congestion? Was that among your responsibilities?

10 A No. We operate the transmission system,
11 but as far as backing the plant down, at times
12 messages did come through our switching centers to
13 the plant, at times it went straight to the plant.
14 I think Bob Cochran could tell you that.

15 Q But other than the fact that the
16 messages went through your switching systems, you
17 were not employed to make the judgments about
18 which plants to operate and not operate to manage
19 congestion, correct?

20 A No, we operated the transmission system.

21 Q Just to clarify your testimony, on page
22 3, paragraph seven, you orally amended your
23 testimony to say, I believe, and correct me if I
24 got this wrong, but I believe you amended it to
25 say at the end of what is it, the third sentence

1 there: not reconductor as one of the
2 recommendations specified by the Cal-ISO. Do I
3 have that correctly?

4 A Yes. It should have said Templeton
5 line, Morro Bay/Templeton line proposes only to
6 rerate the line or reconductor as one of the
7 recommendations by Cal-ISO.

8 Q So you agree that rerating and
9 reconductoring are alternatives, each of which is
10 acceptable to the Cal-ISO?

11 A Yes. But my opinion in the next
12 sentence says simply rerating is insufficient.
13 Furthermore, the necessary information to assess
14 the rerating mitigation alternative will not be
15 available until the summer of 2002, preventing a
16 complete assessment of this alternative at this
17 time.

18 So I don't see how you can certify this
19 as okay before we know it's okay.

20 Q We know what your testimony says. I
21 wasn't asking you about that, I was simply --

22 A Okay, I just -- I added that on because
23 you implied that I think they're the same. I
24 don't think that they should be the same.

25 Q I did not mean to imply that. My

1 question was -- just to clarify the record my
2 question went to this issue of what the ISO was
3 recommending. And I believe that what I'm hearing
4 is that you agree with the testimony that's been
5 presented by others today that rerating was an
6 acceptable alternative to the ISO.

7 I understand your testimony is that you
8 disagree with that, is that fair?

9 A Yes.

10 Q Okay. You've testified to the problems
11 in northern California that PG&E has experienced
12 with fires.

13 Am I correct in my understanding that
14 these fires are primarily from distribution line
15 outages as opposed to transmission line outages?

16 A I think there were some of both.
17 Probably more distribution because there's more
18 miles of distribution line than transmission.
19 Probably ten to one.

20 Q You also testified that you believe that
21 the Diablo Canyon Plant would not be an
22 appropriate one to load follow, do you recall
23 that?

24 A Yes, I do.

25 Q Do you believe that load following is an

1 important facility, important service, if you
2 will, that is necessary for managing congestion?

3 A Absolutely, that's why I'm working at a
4 peaker plant right now.

5 MR. ELLISON: That's all I have, thank
6 you, Mr. Boatman.

7 MR. BOATMAN: Thank you.

8 HEARING OFFICER VALKOSKY: Ms. Holmes?

9 MS. HOLMES: No questions.

10 HEARING OFFICER VALKOSKY: The City?

11 MR. SCHULTZ: No questions.

12 HEARING OFFICER VALKOSKY: Any redirect?

13 REDIRECT EXAMINATION

14 BY MS. CHURNEY:

15 Q Just to follow up on your last comment
16 regarding the peaker facility, do you draw a
17 distinction between the peaker facility that
18 you're working on now and what is proposed
19 utilizing duct firing with this Morro Bay Power
20 Plant?

21 A I do draw a huge distinction. The duct
22 firing that is proposed for this plant is minutely
23 more efficient than the LM600. Minutely, actually
24 probably dirtier than the LM600 -- 6000, excuse
25 me.

1 The LM6000 500 megawatt peaker is a very
2 very clean burning machine. And it also goes
3 along with the velocity that I believe in, which
4 is in distributed generation. Instead of a large
5 mass causing a huge impact on a community,
6 distributed generation is spread around.

7 It would take, for instance, probably
8 eight 50 megawatt generation units to serve a
9 whole area from south of Santa Maria to north of
10 San Miguel. We wouldn't see one large industrial
11 complex to support not only this area, but ten
12 times this area. We wouldn't see much of
13 anything, because a 50 megawatt plant can be built
14 around the corner from you and you may not know
15 it.

16 I've worked on them in Pennsylvania,
17 Illinois, Florida. And so it's a philosophy, but
18 it's also it's a load follower and it's the best
19 way to load follow. It's small. And it doesn't
20 add additional pollution to maybe a clean burning
21 plant like a -- it isn't as efficient as a normal
22 plant in terms of fuel per megawatt.

23 The California peaker program, as you
24 know our Governor has given bonuses to companies
25 to build peakers. I don't know if Duke is

1 involved in that or not. But, certainly the
2 Calpine peaker project in King City and in Gilroy
3 is adding peakers.

4 In fact, the state has got so many
5 peakers being built right now that they stopped
6 discussions and negotiations to build 31 more,
7 saying we have plenty more than enough. And that
8 they want to invest their Power Authority money in
9 renewable energy and in green energy instead of
10 more peaker plants.

11 I think that's telling us they have
12 plenty of load following capability and plenty of
13 peaker capability right now.

14 Is there anything else?

15 HEARING OFFICER VALKOSKY: Anything
16 further?

17 MS. CHURNEY: I have no further
18 questions.

19 HEARING OFFICER VALKOSKY: Recross, Mr.
20 Ellison?

21 RECROSS-EXAMINATION

22 BY MR. ELLISON:

23 Q Is it your understanding, Mr. Boatman,
24 that the decision of the Governor and the State of
25 California with regard to the peaker program was

1 affected by the licensing and construction time of
2 a peaker versus a combined cycle project?

3 A Say that again?

4 Q Let me ask it this way. Isn't it true
5 that you can bring a peaker online more quickly,
6 in terms of construction time in particular, than
7 you can a combined cycle facility?

8 A Well, of course you can, but our problem
9 was only during peak times anyway. There's plenty
10 of electricity for normal times.

11 Q Do you consider yourself an expert on
12 the supply/demand balance in the western United
13 States?

14 A Yes, I do.

15 Q What is your background with respect to
16 that?

17 A My 40 years in the business; and my last
18 eight to ten years at power plants; and my last
19 two or three years in speaking to just about
20 anyone that would listen to me about electricity.

21 I was telling you or anyone that would
22 listen when our crisis first started that we
23 didn't have a crisis.

24 HEARING OFFICER VALKOSKY: Okay, I
25 would, at this time, like to caution both the

1 witness and the attorneys that the Commission is
2 well aware of the ramifications and the
3 possibilities, the disagreements with state energy
4 policy. We don't need that discussed here.

5 Okay, if you will just proceed with the
6 factual matters.

7 MR. ELLISON: Fair enough, Mr. Valkosky.
8 I'll let the record stand as it does right now,
9 thank you.

10 MR. BOATMAN: Thank you.

11 HEARING OFFICER VALKOSKY: Ms. Holmes?
12 City? The Committee thanks and excuses the
13 witness.

14 MR. BOATMAN: Thank you.

15 HEARING OFFICER VALKOSKY: Does the
16 intervenor CAPE wish to move exhibit 123, that's
17 what we've designated Mr. Boatman's testimony and
18 declaration.

19 MS. CHURNEY: Yes, I will move it into
20 evidence.

21 HEARING OFFICER VALKOSKY: Is there
22 objection? That will be admitted. Is there
23 public comment on either of the transmission
24 topics, specifically transmission line safety and
25 nuisance and transmission system engineering?

1 Seeing none, we'll close the record on
2 those portions. And at this time we'll take
3 approximately a ten-minute recess and reconvene at
4 3:55.

5 (Brief recess.)

6 PRESIDING MEMBER MOORE: Let's see if we
7 can bring everyone back to order here. There's
8 been a few questions asked about what the
9 Christmas music was. I'm going to have to reveal
10 that the Christmas music that seemed to be coming
11 from somewhere is Stan's tie. And he actually has
12 been bumping, inadvertently bumping the table and
13 that sets the tie off, and then music starts.

14 So all I can do is offer apologies, but
15 he's larger than I am, so I haven't been able to
16 get him to take it off.

17 HEARING OFFICER VALKOSKY: I'd just like
18 to correct Commissioner Moore's statement about
19 inadvertently bumping the table.

20 (Laughter.)

21 PRESIDING MEMBER MOORE: All right.
22 We're reconvening after a break for our December
23 17th evidentiary hearing. And we've completed all
24 but two items, and the scheduling conference that
25 we're going to have today.

1 So that brings us back to project
2 description. And I understand that the applicant
3 has a slide show that they'd like to present for
4 us to start this topic.

5 Normally I would just add this is the
6 kind of topic that would come at the front end of
7 the discussion, but because of scheduling
8 difficulties for some of the witnesses we moved it
9 out of sequence thinking that as long as it was on
10 the first day it was still adequate.

11 But understandably this is designed to
12 be our overview topic, the one which introduces us
13 to the kind of nuts and bolts of the actual
14 project, itself, while the nuts and bolts of the
15 project, itself, are discussed in separate issues,
16 such as the ones we've been going through.

17 So, going back to the overview, as it
18 were, the introduction to all of this, Mr.
19 Ellison, you have the floor.

20 MS. CHURNEY: Before we start this I'd
21 like to raise a couple of issues because it may
22 short-circuit somewhat the testimony. And I do
23 have a few objections based on the written
24 testimony.

25 Would this be appropriate to raise at

1 this time?

2 PRESIDING MEMBER MOORE: Well, I guess
3 I'd be interested to hear what they are, so if
4 you'll pause, Mr. Ellison, let's hear what you
5 have in mind, counsel.

6 MS. CHURNEY: Well, I first of all
7 object to any testimony in this subject matter
8 area covered in future hearings on topics, for
9 example, such as air, water or noise.

10 I believe the project description should
11 be limited only to the items that affect all
12 subject matter areas across the board, or most of
13 them, so that if these areas are going to be
14 discussed later on separately, and we know they
15 will, since the FSA has been divided up, those
16 issues in the presentation should be reserved,
17 just as you've reserved other items earlier today
18 on various issues that you've deemed to be more
19 appropriately raised at later times.

20 I'd also object to offered testimony
21 regarding the witnesses' unsubstantiated opinions
22 on how, quote, "extraordinary" this project will
23 be. I believe this witness should be, and should
24 be allowed to offer percipient witness testimony
25 as to facts, but as to opinions, I think that

1 would be improper.

2 And finally, with respect to testimony
3 regarding Duke's community outreach, I would
4 object to that on the basis of relevancy under
5 CEQA. I believe Duke did what they thought they
6 had to do necessary to minimize community
7 opposition, but that's not relevant in a CEQA
8 analysis.

9 The only relevant information should be
10 about public -- that the public opposition, in
11 closed cases under CEQA, when there's a
12 determination whether or not an EIR is required to
13 be made. So I would object to elaboration in that
14 area, as well.

15 PRESIDING MEMBER MOORE: Let's go back
16 to that third point for a second. I'm not sure I
17 understand what you mean as far as elaboration on
18 that topic.

19 MS. CHURNEY: Well, the only thing
20 relevant in that area, it seems to me, under CEQA
21 should be about public opposition; in closed cases
22 under CEQA when the determination is whether or
23 not an EIR is required to be made or not.

24 I mean, otherwise what relevance is
25 community outreach?

1 PRESIDING MEMBER MOORE: Well, before I
2 ask for Mr. Ellison's response to that, let me
3 just say I just need to be clear. In your first
4 two points are you asking me to exclude testimony
5 that goes to the broad overview of what the
6 project is about, introducing a topic, speaking
7 topically about it, for instance air quality, when
8 it's clear that that topic is going to be dealt
9 with in more detail later?

10 MS. CHURNEY: Well, yes. I mean to the
11 extent that he will be testifying, it appears from
12 his written testimony that he will be testifying
13 as to very specific requirements and
14 specifications in the air quality area, yes, I
15 would object to that being gone into at this point
16 without the actual expert testimony in those
17 areas.

18 MS. HOLMES: At the risk of muddying the
19 waters --

20 (Laughter.)

21 PRESIDING MEMBER MOORE: Step right in,
22 counsel.

23 MS. HOLMES: I actually was planning to
24 raise a similar concern, but I thought that
25 perhaps the best way to deal with it would be to

1 have -- to ask questions to Mr. Trump and Mr.
2 Cochran as to whether or not they were testifying
3 as experts in the technical areas that are
4 discussed in the project description testimony.

5 To the extent that they are merely
6 summarizing what they believe that the testimony
7 of Duke technical experts will be, and they are
8 not putting forth their own conclusions as to
9 significance of impacts, with that kind of a
10 clarification I think we wouldn't have concerns.

11 But I --

12 PRESIDING MEMBER MOORE: Okay, and I
13 think that's probably the clarification that I
14 would seek from counsel for the applicant.

15 But let me just say at the outset, even
16 though I describe these hearings as being very
17 narrow in the sense that we're proscribed by the
18 law and by rules and procedure, that does not mean
19 that I intend to give up my ability or your
20 ability to hear a broad overview of what the
21 project is all about.

22 And to the extent that a project is the
23 sum of its very necessarily interrelated parts, I
24 think it's fair to introduce those topics, and
25 introduce them along with the opinions of the

1 applicant about what they're proposing, whether
2 they think it's good for the community or not. In
3 many cases a lot of the project proposals come in,
4 again this would normally have come right at the
5 front end of the presentation.

6 So, you're hearing what the applicant
7 wants the public to hear and see about their
8 project. And frankly I don't see anything wrong
9 with that. Neither do I see anything wrong with
10 as we go into each piece everyone taking a very
11 critical stance of what those pieces mean.

12 But we've got to see it in context. And
13 I don't think the project is going to exist
14 without the intention of the applicant to apply
15 air quality controls, the intention of the
16 applicant to change the visual outline of the
17 plant, all of those things of necessity are a
18 description of the project, itself. And I think
19 it's appropriate to have those go on the record.

20 With regard to the more specific
21 question that was the third one that the
22 intervenors' counsel raised, and which our counsel
23 for staff also elaborated on, let me ask Mr.
24 Ellison to respond to those.

25 MR. ELLISON: Well, first of all, let me

1 say that with respect to the clarification sought
2 by staff, as well as the concern raised by CAPE
3 regarding the relationship between the overview in
4 different topic areas and those topic areas,
5 themselves, we are, I think, in complete agreement
6 here, actually.

7 We have no problem giving the
8 clarification that Ms. Holmes asked for. We think
9 that's perfectly appropriate. That's all that
10 these witnesses are doing, is summarizing in the
11 nature of an overview, what the expert witnesses
12 in each topic area will say.

13 And we have no problem giving that
14 clarification. And if people want to reserve
15 questions in those topic areas for those
16 witnesses, we think that's the appropriate way to
17 proceed with respect to that.

18 With respect to the two other issues
19 that I heard raised with respect to the opinions
20 regarding the merits of the project, we've
21 certainly heard opinions on a variety of topics
22 already this morning. There's nothing about this
23 proceeding that excludes opinions.

24 That's what they are, however, I'd be
25 happy to clarify that the opinions that are

1 offered in the direct testimony are the opinions
2 of Mr. Trump and Mr. Cochran, and no more than
3 that or less than that.

4 Finally, with regard to the community
5 outreach, again in the nature of describing this
6 project we think that it is relevant to talk about
7 not only what the project is, but how it came to
8 be what it is.

9 And that's particularly true for this
10 project because you cannot understand the
11 overview, the overall nature of this project
12 without understanding what it started out to be
13 and how it's become what it is.

14 So we think the relevance of that to
15 understanding the project as a whole is fairly
16 self evident.

17 PRESIDING MEMBER MOORE: Well, to the
18 extent that we are interested in getting every
19 possible fact that we can out on the table so as
20 to render the most complete judgment possible,
21 then I'm going to, where I can I'm going to err on
22 the side of having more information come out,
23 whether it's an opinion which we'll have to
24 adjudicated up here and determine how to deal with
25 it, or whether it's a fact or a conclusion drawn

1 by experts.

2 And so the more of that that I can get
3 on the record the better. And I'll consistently,
4 I hope, err on the side of that. I think the
5 public is better served when I do.

6 So, Mr. Ellison, with that I'm going to
7 turn it over to you, and ask for your
8 presentation.

9 MR. ELLISON: Okay. The applicant's
10 witnesses with respect to project description are
11 Mr. Andrew Trump, who's Director of Business
12 Development, and Mr. Robert Cochran, who is the
13 Director of Operations. They are seated to my
14 left rather than where the other witnesses have
15 been seated, because of the presentation that
16 they're going to make, of the slides.

17 I'll address my questions to Mr. Trump
18 who will answer on behalf of the panel.

19 DIRECT EXAMINATION

20 BY MR. ELLISON:

21 Q Mr. Trump, do you have before you the
22 portion of exhibit 117 entitled project --

23 HEARING OFFICER VALKOSKY: Excuse me,
24 Mr. Ellison, have both the witnesses been sworn?

25 MR. ELLISON: No.

1 HEARING OFFICER VALKOSKY: No.

2 Whereupon,

3 ANDREW TRUMP and ROBERT COCHRAN

4 were called as witnesses herein, and after first

5 having been duly sworn, were examined and

6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ELLISON:

9 Q Mr. Trump, do you have before you the
10 portion of exhibit 117 entitled project
11 description beginning on page 23?

12 A I do.

13 Q And was that testimony prepared by you
14 or at your direction?

15 A It was.

16 Q Do you have any corrections that you
17 would like to make to that testimony?

18 A We have three minor corrections. On
19 page 31 we would like a very minor word change.
20 The words, it's at the very first, first
21 paragraph, first sentence of the page that begins:
22 Access between, we recommend that the words Camp
23 SLO and Morro Bay Power Plant or MBPP be swapped.
24 And then the words Quintana Road be crossed out
25 and inserted there would be the following words:

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1 through Main Street, Highway 1, and then continue
2 with South Bay Boulevard.

3 We have an additional change on page 37.
4 There is a typographical error in the table. It
5 is the second row, the right-hand column. It
6 states 80 month schedule; that should read 72.

7 There's also a minor clarification on
8 page 42 with reference to the part per million NOx
9 limits, and there's some additional words to be
10 added.

11 MR. COCHRAN: Yes, on page 42, in the
12 paragraph under a special note on the air quality
13 control system, second line should read: Boilers
14 presently meet a 56 ppm at 3 percent excess SO2
15 NOx limit. This compares with the proposed 2 ppm
16 limit at 15 percent excess SO2.

17 MR. TRUMP: Those words better clarify
18 the nature of the comparison as more accurate.
19 Those are the only three changes or clarifications
20 we have.

21 MR. ELLISON: With those changes is the
22 testimony true and correct to the best of your
23 knowledge?

24 MR. TRUMP: It is.

25 MR. ELLISON: And are the opinions

1 contained therein your own?

2 MR. TRUMP: They are.

3 MR. ELLISON: At this point I would move
4 the admission of that portion of exhibit 117, as
5 well as the exhibits that are incorporated by
6 reference therein, which are the designated
7 portions of the AFC, which is exhibit 4; exhibit
8 3; a June 21st letter from Brad Portalair of Duke
9 Energy to Mayor Roger Anderson, which is included
10 as part of the AFC in exhibit 4; a July 13, 2000
11 letter from Mayor Anderson and three
12 Councilmembers to Brad Portalair of Duke Energy,
13 which is also included in the AFC portion of
14 exhibit 4; and exhibit 95.

15 PRESIDING MEMBER MOORE: Mr. Ellison,
16 are you going to have reference to 95? Will you
17 be using that in your testimony?

18 MR. ELLISON: It's included by reference
19 in the written testimony that we filed; and it
20 discusses --

21 PRESIDING MEMBER MOORE: My reason for
22 asking you, sir, is that since that appears to be
23 a pretty dynamic process, is that likely to be
24 something that will come up in discussion of the
25 project description.

1 MR. ELLISON: It comes up in a general
2 way in project description.

3 PRESIDING MEMBER MOORE: But not in a
4 specific way?

5 MR. ELLISON: We're not going to go into
6 specifics about what that agreement to lease
7 contains or doesn't contain. But it certainly
8 helped shape this project and it's relevant to the
9 overall project description.

10 PRESIDING MEMBER MOORE: Thank you. Any
11 objections? No. City, no?

12 MR. SCHULTZ: No.

13 PRESIDING MEMBER MOORE: Intervenors?

14 MS. CHURNEY: No.

15 PRESIDING MEMBER MOORE: No. All right,
16 so admitted.

17 MR. ELLISON: We do have one minor piece
18 of rebuttal in project description.

19 BY MR. ELLISON:

20 Q Mr. Trump, have you reviewed the
21 declaration submitted by Mr. McCurdy in this
22 proceeding?

23 MR. TRUMP: I have.

24 MR. ELLISON: As part of that
25 declaration Mr. McCurdy expresses concerns about

1 the ability of Duke to continue to use Camp San
2 Luis Obispo as its construction laydown area, in
3 light of the increased security resulting from the
4 events of September 11th, do you recall that?

5 MR. TRUMP: I do recall that concern and
6 statement in Mr. McCurdy's testimony.

7 MR. ELLISON: Could you address the
8 issue of the continued ability of Duke to use Camp
9 San Luis Obispo post-September 11th?

10 MR. TRUMP: I can. After September
11 11th, because of our own questions concerning
12 access to Camp San Luis Obispo -- Camp San Luis,
13 rather, we did meet with Camp representatives
14 shortly after.

15 And in a meeting with them to update
16 them more generally about the project, we also
17 wanted to very explicitly address our questions
18 and concerns about continued access to the Camp.

19 And at that meeting we were reassured
20 that they did not see any conflict between our
21 proposed uses at the Camp and the current security
22 procedures and provisions that they've instituted
23 at the Camp.

24 PRESIDING MEMBER MOORE: Did they
25 publish that in a letter?

1 MR. TRUMP: That was a reassurance given
2 to us orally at that time.

3 PRESIDING MEMBER MOORE: Thank you.

4 MR. ELLISON: For the record there are
5 no conditions of certification in the final staff
6 assessment associated with project description, so
7 we're not going to ask about those.

8 BY MR. ELLISON:

9 Q Mr. Trump, on behalf of the panel could
10 you describe this project?

11 MR. TRUMP: Yes, I can. I'll just take
12 a couple minutes to provide an overview of some of
13 the salient project features and other aspects of
14 the project which we believe are noteworthy. I'll
15 try to keep my comments brief.

16 We do have a couple of slides which I'll
17 share in a couple minutes.

18 What we've tried to, in our testimony,
19 intent of our testimony is to set out what our
20 project, restate a number of our project
21 objectives, including modernizing with a more
22 efficient facility; use and reuse of all the
23 existing infrastructure as best as we can.

24 To insure that the project is consistent
25 with LORS; to avoid and minimize to the most

1 significant extent possible any and all
2 environmental impacts; and a number of other
3 objectives.

4 We do believe this project is an
5 exceptional project. I won't go into lots of
6 details about that. We think that the project
7 features and the extensive programs associated
8 with it speak for itself.

9 We've also identified in that a laundry
10 list of very important benefits that are
11 associated with the project to the community.

12 One thing that is very important to
13 remember about this project as it calls for the
14 removal of what is a viable operating facility.
15 Last year the facility produced in year 2000 over
16 5 million megawatt hours of electricity. This
17 year we expect it to be over 4.25 million megawatt
18 hours of electricity.

19 I think it's important to discuss
20 briefly just some of the tremendous efforts that
21 Duke Energy did embark on, beginning in 1998 with
22 an effort to define this project.

23 We then filed an AFC in 1999. That AFC
24 was later withdrawn once Duke Energy learned that
25 a number of the proposed aspects of the project

1 were unacceptable to the community.

2 And then Duke Energy entered
3 approximately a year period of time trying to work
4 with the community through a variety of means
5 including workshops, and through the guidance of
6 the MOU process to gain additional input about
7 what would make an acceptable project.

8 Those efforts culminated in workshops
9 and activities interaction in the summer of 2000,
10 which led to Duke deciding to redefine its project
11 as a single phase project.

12 And at that time the City of Morro Bay's
13 leadership communicated to Duke what it viewed at
14 that time as issues of significant and major
15 importance, in addition to the single phase
16 aspects of the project. And I've discussed those
17 briefly in the testimony regarding a number of
18 different aspects.

19 Completing the project in a single phase
20 of approximately seven years was an issue of
21 major, it was characterized as major new
22 commitments of great importance to the community.

23 We agreed to that commitment; in fact we
24 exceeded it twice. We developed a 72-month
25 schedule, and then we further revised that

1 schedule pursuant to the application and data
2 request to a 60-month schedule, or five-year
3 schedule.

4 Demolish the existing onsite fuel tanks
5 as soon as possible. We agreed to that. That was
6 part of the revised AFC. Demolish three stacks as
7 part of the first demolition activities once
8 commenced. We agreed to that. And that was
9 proposed as part of our agreement to lease process
10 with the City of Morro Bay. And also is part of
11 our AFC demolition schedule.

12 Refurbishing the intake structure
13 facade. Likewise, agreed. We've actually had a
14 workshop recently with the City of Morro Bay, a
15 voluntary workshop outside the auspices of the
16 Energy Commission process, where we've shown three
17 different design treatments for the intake
18 structure. In fact, shown other designs earlier
19 in the process.

20 Agreed to nonenergy uses for the
21 property where the existing power plant complex
22 sits was another issue. That was agreed by Duke
23 as part of the proposed agreement to lease.

24 Entering into an agreement with local
25 Native Americans to address issues of concern. We

1 agreed and we entered into an MOA with one local
2 Native American group, the Shumash Council.

3 Agree to address the City's public
4 service concerns with respect to the police, fire,
5 utilities, roads, public facilities, et cetera.
6 That was expressed as another issue of major
7 importance to the community.

8 As part of our AFC we developed a whole
9 series of programs, and we also developed
10 additional programs as part of the agreement to
11 lease, and they're listed on page 38.

12 Cooperating with the City to implement
13 the City's waterfront master plan was identified
14 as an additional issue of great importance to the
15 City. And we've included a number of programs as
16 part of the project description, as well as
17 proposals for the dedication of over five acres of
18 coastal property to the City as part of the
19 agreement to lease process.

20 Using quiet pile-driving techniques was
21 another issue identified as major importance to
22 the City. We agreed to that as early as May of
23 2000.

24 Consider community input in developing
25 exterior treatments, landscaping concepts for the

1 project so that the visual impacts of the project
2 minimized. That was identified as an issue of
3 significant importance to the City, of great
4 importance, excuse me. And again we believe that
5 we have done a tremendous amount of effort with
6 the community, with the City of Morro Bay, through
7 a series of workshops culminating in the November
8 5 workshop to address those very issues.

9 So, those and other commitments I think
10 reflect our efforts to insure that we are
11 listening and that we've tried to incorporate into
12 the design of this project aspects and project
13 features which have been communicated to us
14 formally as being of great importance to the
15 community.

16 And we therefore took those into both
17 the revised AFC in the project description
18 formally, as well as into the agreement to lease
19 process with the City.

20 I think as a partial indication of that
21 process' success there was a ballot initiative in
22 November of 2000 and the referendum on the project
23 and advisory measure received over 64 percent of
24 the vote locally. And as is typical in Morro Bay
25 there was a very very high voter turnout.

1 I'd like to just touch upon another very
2 key aspect of our efforts here that deal with the
3 site and site constraints. And after I show you a
4 couple slides, I'm going to turn it over to Mr.
5 Cochran for descriptions of project features.

6 I do want to touch upon just one aspect
7 of the environmental and facility design
8 considerations that we've had to really really
9 work very hard at, and that is to accommodate our
10 proposed project in the site.

11 This slide shows the property boundary,
12 the Duke Energy's property boundary. I'm going to
13 go through a series of different considerations
14 that affect our ability to site the facility as
15 proposed.

16 This slide shows -- and these slides are
17 in the testimony -- this slide shows the location
18 of the existing power plant. And one design
19 criterion is, of course, we want to keep the
20 existing --

21 HEARING OFFICER VALKOSKY: Excuse me,
22 when you're referring to one of the slides in the
23 testimony, it makes the record clearer if you will
24 refer to it by number in the testimony, or by
25 title in the testimony, just so there's an

1 unambiguous reference.

2 MR. TRUMP: I will. Unfortunately, each
3 of the slides, I think, are numbered site
4 constraints, so -- oh, existing power plant. So
5 the purple hashing or red hashing there shows the
6 location of the existing power plant and, of
7 course, we are endeavoring to do everything
8 possible to insure the continued operations of the
9 facility until the point that the new units are
10 commercially available.

11 This slide is entitled existing
12 discharge. Key consideration in follow up to that
13 earlier slide is that we need to insure the
14 continued viability of the existing discharge
15 tunnels and canals that transverse the property
16 and provide the sea water cooling discharge for
17 the existing facility.

18 This next slide is entitled PG&E
19 property. A constraint that exists on site is, of
20 course, this particular part of the property area
21 is not owned by us, and it is owned by PG&E for
22 the switchyard. And of course that's a viable
23 part of the infrastructure of the facility. So we
24 can do nothing that impairs the continued use of
25 the switchyard facility.

1 This next slide is entitled existing
2 transmission corridor. To gain access to the PG&E
3 switchyard we need to make sure that we can tie
4 into a set of breakers that are in the switchyard
5 in specific locations. So this transmission
6 corridor is an area that cannot be used for any
7 new construction or infrastructure on site, except
8 for the new circuits that will be going into the
9 existing breakers on site.

10 This slide is entitled existing lease
11 areas. The Duke Energy Power Plant property
12 includes a series of leases. Within the power
13 property boundary those include the Lila Kaiser
14 Ballpark. We have a lease to a business owner for
15 RV storage and campground area. And there's also
16 a fishermen's gear storage and some additional
17 leases to the City for storage, as well. So we
18 are, of course, maintaining the integrity of those
19 uses.

20 There's also, as part of this project,
21 as part of the agreement to lease, -- I'm sorry,
22 this slide is entitled proposed dedication and
23 future lease areas. We are proposing a dedication
24 of property to the City of Morro Bay that is shown
25 on this slide, down in this area.

1 There's also a proposed marine mammal
2 center on the facility, a triage facility for
3 marine mammals. So, again, those create
4 additional encumbrances in terms of what's left
5 over for the new power plant facility or power
6 blocks.

7 This slide shows sensitive areas and
8 buffer. Here in yellow you see -- that are within
9 the property and an area of conservation
10 protection. And again, these are areas that we
11 cannot use for the proposed project because of
12 their sensitivity.

13 This slide is called existing berm.
14 And, again, to further constrain the site there is
15 a berm that is running from this location on the
16 outside of periphery of the area where the new
17 power blocks will be situated. We need to
18 maintain the integrity of that berm for purposes
19 of FEMA and flood protection.

20 So when you put all that together, this
21 slide is called available land, when you put that
22 all together it restricts the amount of property
23 that's actually available for the location of the
24 1200 megawatt power blocks. You'll see this is in
25 the hashed area here, and there's also a small

1 area over here which we're planning to use for
2 some parking.

3 And to show the juxtaposition of the
4 overlay of the proposed facility in that area, we
5 have a final slide called proposed plant location.
6 And that shows the new combined cycle units
7 situated on the property within that area
8 availability.

9 Part of the reason for me sharing these
10 slides is that we have a tight site. It's led to
11 several project features which Mr. Cochran will
12 describe briefly. But it really affects the
13 interconnection of a host of different
14 environmental and site features and analysis
15 associated with that, dealing with can you move
16 things; if you do move things how does it affect
17 noise; how does it affect air quality; how does it
18 affect FEMA flood considerations; how does it
19 affect buffers; how does it affect the various
20 infrastructure that needs to be preserved, et
21 cetera, et cetera.

22 So one of the messages I'm intending to
23 leave here is that we have a very well defined
24 project and site and a tremendous
25 interconnectedness of its various parts to various

1 issues.

2 And so one thing that we will be
3 explaining in our testimony that will ensue in
4 January and later will be the interconnection of
5 why things can't change from what we've described.

6 I'm going to ask Mr. Cochran to describe
7 some project features briefly.

8 MR. COCHRAN: My name is Robert Cochran,
9 C-o-c-h-r-a-n. And as Mr. Trump stated, I'll
10 summarize several of the major project features
11 associated with modernization of the Morro Bay
12 Power Plant.

13 The project is proposed for
14 implementation in three distinct phases. The
15 first phase will be demolition of the existing
16 fuel oil tank farm, and then any necessary
17 remediation of soil beneath the tanks.

18 Second phase will be construction of the
19 two new combined cycle units in the 19-acre tank
20 farm site once those tanks have been removed.

21 And then the third phase of our project
22 is demolition of the existing units 1 through 4,
23 the power building that currently houses those
24 units, and the three 450-foot tall stacks.

25 The new units will be much smaller, more

1 reliable and more efficient than the existing
2 units 1 through 4. Each of the new units will
3 include two GE 7FA combustion turbines; two heat
4 recovery steam generators; and a steam turbine
5 generator powered by steam produced from the
6 combustion turbine waste heat in the steam
7 generators before being exhausted out of its
8 associated 145-foot tall stack.

9 The new units will produce 1200
10 megawatts of power at peak load, compared to 1002
11 megawatts from the existing units.

12 The new units will be much more
13 efficient than the existing units. The existing
14 units have an average heat rate of about 10,000
15 Btus per kilowatt hour. The new units heat rate
16 will be about 6865 Btus per kilowatt hour at
17 baseload, and 7200 Btus per kilowatt hour at peak
18 load.

19 As evidenced in the slides Mr. Trump
20 presented great care was taken in designing the
21 equipment arrangement on the site. We considered
22 several alternative layouts and carefully reviewed
23 those designs to make best use of the
24 interconnection to linear facilities such as
25 cooling water, natural gas and electric.

1 The layout was selected from the
2 alternatives after review with City Staff during
3 the preapplication review process agreed to in the
4 memorandum of understanding.

5 Design of the product, which includes
6 significant input from the community, presented
7 challenges and also opportunities, which has
8 enabled Duke to create a project that has many
9 benefits for the community.

10 Due to constraints on the site we have
11 developed project design features that includes an
12 offsite staging and laydown area, and an offsite
13 employee parking area.

14 The staging area is a 40-acre site
15 located in Camp San Luis, and the parking area is
16 a 10-acre site just south of Morro Bay. The
17 offsite parking may be necessary for several
18 months during the construction peak when it's
19 anticipated that about 700 workers will be onsite
20 during the day shift.

21 Onsite employee parking will include a
22 temporary foot bridge over Willow Camp Creek to
23 access the construction site from the parking area
24 in the northeast portion of the property.

25 The traffic circulation plan was

1 designed to direct construction traffic to and
2 from the site, while avoiding traffic into
3 downtown areas.

4 Roadway improvements are proposed for
5 the extension of Embarcadero south of Morro Creek
6 and a new access from the site; and then out to a
7 24-foot wide bridge that will span the creek. The
8 bridge will connect the improved south Embarcadero
9 to the north Embarcadero, and then to Atascadero
10 Road, which intersects with Highway 1, Main Street
11 and Highway 41.

12 Upon completion of construction the
13 bridge will be dedicated to the City. Duke is
14 also providing \$1.4 million in funding to the City
15 for other road, bike and pedestrian path
16 improvements.

17 In all, approximately 8000 feet of new
18 bike and pedestrian paths will be constructed or
19 funded by the project which will greatly enhance
20 coastal access.

21 Construction of the new units will
22 proceed in steps. First will be the installation
23 of pilings and construction of foundations on the
24 graded site.

25 Next will be the erection of above-

1 ground structures and installation of equipment,
2 piping and cabling. And last will be the final
3 grading and surfacing, followed by implementation
4 of the landscaping plan.

5 Startup testing and release for
6 commercial operation for each of the new units is
7 expected to be about a month apart. Following
8 commercial operation of the new units, Duke will
9 begin demolition of the existing plant.

10 One of the first demolition activities
11 will be the removal of the three 450-foot tall
12 stacks. Demolition of the existing plant will be
13 accomplished in 36 months.

14 Duke has successfully sought engineering
15 solutions to the myriad of challenges presented in
16 permitting of the Morro Bay Power Plant project.

17 The goal of Duke Energy in managing the
18 operation of the Morro Bay Power Plant is to
19 provide energy, capacity, load following
20 capability and system voltage support in an
21 efficient and reliable manner, while insuring the
22 safety of personnel, the environment and plant
23 equipment, and complying with applicable laws.

24 These goals have been consistently
25 achieved through integrated performance,

1 predictive maintenance, modifications and
2 improvements and a concerted effort by Duke Energy
3 to operate its plants at their highest
4 economically justified level of efficiency and
5 reliability.

6 BY MR. ELLISON:

7 Q Mr. Trump, does that conclude your
8 description of the project?

9 MR. TRUMP: It does.

10 MR. ELLISON: The witnesses are
11 available for questioning.

12 PRESIDING MEMBER MOORE: Thank you. I
13 would note the maps are in the packets, so the
14 illustrations are widely available. Mr. Valkosky.

15 HEARING OFFICER VALKOSKY: I'd like to
16 address this to the panel. I'm referring to what
17 we've designated as exhibit 118, which is a
18 testimony of a Mr. Algert on behalf of the City of
19 Morro Bay. Do you have that document?

20 MR. TRUMP: I'm sorry, testimony on
21 behalf of who?

22 HEARING OFFICER VALKOSKY: Of Rick
23 Algert on behalf of the City of Morro Bay. I'd
24 like you to turn to page 3 of that testimony. At
25 the bottom under the paragraph entitled

1 recommendation.

2 And I'd like to know if you agree with
3 the correctness of that statement.

4 MR. TRUMP: There is a -- we agree that
5 we need to renew the outfall easement which
6 expires November 14, 2004. The question as to
7 whether or not it can be held in some hold-over
8 status is a legal question which I'm not prepared
9 to answer. So that would qualify the one
10 statement that cannot be extended or held over, I
11 don't know the legalities of whether that can or
12 cannot be the case.

13 HEARING OFFICER VALKOSKY: Okay. Thank
14 you for that clarification. So, with the
15 exception of the words "may not" or "may not be"
16 in line three of that paragraph, you don't have
17 any other disagreement with it?

18 MR. TRUMP: We agree that prior to
19 commencement of construction we will have to
20 secure a long-term lease for the outfall easement.

21 HEARING OFFICER VALKOSKY: Okay. And
22 that the outfall canal is subject to a 50-year
23 agreement? That's another factual statement in
24 there.

25 MR. TRUMP: It is currently subject to a

1 50-year agreement, that's correct.

2 HEARING OFFICER VALKOSKY: Thank you.

3 PRESIDING MEMBER MOORE: All right,
4 questions on this presentation from staff? Cross-
5 examine.

6 MS. HOLMES: No questions.

7 PRESIDING MEMBER MOORE: From the City?

8 MR. ELIE: You took away some of our
9 cross-examination.

10 (Laughter.)

11 PRESIDING MEMBER MOORE: Well, maybe we
12 can get Mr. Valkosky to give some of it back.

13 (Laughter.)

14 MR. ELIE: That 's all right, thank you.

15 CROSS-EXAMINATION

16 BY MR. ELIE:

17 Q If we could ask the panel to look at
18 page 38 of the testimony. This is something that,
19 Mr. Trump, you covered. Perhaps you would be the
20 best to answer it.

21 Third-to-last box talking about
22 cooperating with the City to implement the City's
23 waterfront, et cetera, do you see that?

24 MR. TRUMP: I do.

25 MR. ELIE: I'm sorry, my voice is going

1 here. The first bullet point on what Duke has
2 done refers to the purchase of property from a
3 private landowner. Is that the property commonly
4 known as Dendaw?

5 MR. TRUMP: That is.

6 MR. ELIE: I didn't see that property on
7 the figure which is entitled dedications, as
8 something that's being dedicated to the City.
9 It's my understanding that that was something that
10 was being dedicated to the City.

11 MR. TRUMP: That's correct. That was an
12 omission from the slide. And we should have
13 included that and noted that.

14 MR. ELIE: Perhaps we could put that
15 slide back up and you can show the Committee where
16 that property would be?

17 MR. TRUMP: The property commonly known
18 as Dendaw consists of numerous parcels. I can't
19 tell you exactly how many. I commonly call the
20 property, that consists of three parcels or three
21 groups of parcels. There is this pizza pie shaped
22 wedge of property located here. And then there
23 are two parcels down in around this area which are
24 not shown. They should have been shown.

25 MR. ELIE: So just south of the outfall

1 canal?

2 MR. TRUMP: Well, just, yeah, south,
3 that's correct. Just a little bit north here of
4 the intake structure, in this area here where my
5 pen is indicating.

6 MR. ELIE: Okay, for the Committee's
7 benefit. Thank you.

8 I guess my next question would be best
9 addressed to Mr. Cochran. You talked earlier
10 about the remediation of the tank farms, and in
11 the AFC, which is exhibit 4, at page 2-34, it
12 says, quote: PG&E will assure soil and
13 groundwater is free from contamination, including
14 consulting with all appropriate agencies to
15 determine procedures and cleanup levels, and
16 obtaining necessary permits approvals.

17 My question to you, sir, is how is that
18 assurance from PG&E impacted, if you know, by the
19 bankruptcy and the ability of the trustee to
20 discharge nonexecutory contracts? And I'm not
21 asking for a legal opinion; I understand you're
22 not a lawyer.

23 MR. COCHRAN: What I do know at this
24 time is that we are and have been meeting with
25 PG&E in formulating the plans for cleanup;

1 preparing for tank farm demolition; and the
2 meetings between Duke and PG&E have also included
3 the Water Board and I believe EPA.

4 And I'm not sure how their funding is
5 going to come about as a result of the bankruptcy.
6 If they have a separate fund for those committed
7 expenditures or not.

8 MR. ELIE: So from Duke's perspective
9 there hasn't been any change?

10 MR. COCHRAN: Has not been any change.

11 MR. ELIE: You're still meeting with the
12 same people from PG&E?

13 MR. COCHRAN: That's correct.

14 MR. ELIE: Has there been any -- strike
15 that.

16 Mr. Trump, if you could turn to page 40
17 of your testimony, specifically the bullet points.
18 For the most part generally those bullet points
19 are reflective of portions of the agreement to
20 lease, which is exhibit 95, is that correct?

21 MR. TRUMP: I'm just checking to see
22 which ones might not be part of the agreement to
23 lease, and which ones are part of the Energy
24 Commission licensing application.

25 MR. ELIE: Are some of them part of

1 both?

2 MR. TRUMP: Yes.

3 MR. ELIE: For example, the rent to the
4 harbor fund for the outfall easement, is that in
5 the ATL?

6 MR. TRUMP: Yes, it is. I'm just
7 referring, there's two bullets on top. I mean
8 some of them are more broad and general. But
9 these bullets are all contained in the agreement
10 to lease, as provisions in the agreement to lease;
11 and numerous of them are also project features in
12 the application before the Energy Commission.

13 MR. ELIE: And as I read the transcript
14 from the November 29th scheduling conference I
15 believe Mr. Ellison was quoted as saying as far as
16 Duke is concerned and his understanding, the City,
17 this agreement to lease all the t's are crossed
18 and all the i's are dotted. Would you adopt that
19 statement on behalf of Duke?

20 MR. TRUMP: I would adopt it with a
21 qualification. There are three exhibits to the --
22 there's actually, there's the agreement to lease,
23 and then there's a series of exhibits which
24 accompany the agreement to lease.

25 There are three exhibits, I believe,

1 that have yet to be finalized. One of which is
2 the outfall easement, itself. Another one is a
3 site option purchase agreement. I believe there's
4 a third, but it's fairly minor.

5 We have yet to complete those exhibits
6 as part of our formal negotiations with the City
7 of Morro Bay.

8 MR. ELIE: Subject to that qualification
9 would you then agree with Mr. Ellison's statement?

10 MR. TRUMP: Would you repeat Mr.
11 Ellison's statement?

12 MR. ELIE: As far as Duke was concerned
13 all the t's were crossed and all the i's were
14 dotted and there was an agreement between Duke and
15 the City?

16 MR. TRUMP: I would agree with that
17 statement.

18 MR. ELIE: Thank you. A couple of quick
19 clarifications and then I'll wrap up.

20 On page 32 of the testimony, and I'm not
21 sure which, either gentleman from the panel can
22 address this. Just above tank farm demolition and
23 removal there's a paragraph referring to
24 conservation easements.

25 Were those conservation easements

1 reflected on any of the slide show presentations?

2 MR. TRUMP: The environmentally
3 sensitive habitats are shown in the maps. We
4 would move those to formal conservation easements
5 at the appropriate time.

6 MR. ELIE: Are there any others? Any
7 other conservation easements?

8 MR. TRUMP: Not that I'm aware of.

9 MR. ELIE: And then the paragraph above
10 that, the last five lines or so refers to a trench
11 and a trench box. I presume that this reference
12 is one of those you're just referring to something
13 pretty generally, as opposed to offering expert or
14 factual testimony on that, is that a fair
15 statement?

16 MR. TRUMP: That's fair.

17 MR. ELIE: It's my understanding that
18 was just submitted within the last month, and
19 subject to some of the later hearings, such as
20 land use and cultural resources, is that fair?

21 MR. TRUMP: That's fair.

22 MR. ELIE: No more questions.

23 PRESIDING MEMBER MOORE: Thank you.

24 From the intervenors, CAPE?

25 MS. CHURNEY: Yes.

CROSS-EXAMINATION

BY MS. CHURNEY:

Q Mr. Trump, on page 25 of your testimony you indicate that the existing facility operated at a 59.7 percent plant capacity factor in the year 2000, but is only expected to operate at a factor of 49.1 percent capacity in 2001.

What is the cause of this decline?

MR. TRUMP: There are different market conditions existing this year than the previous year, in year 2000, and those include the availability of some resources through some conservation; availability of resources through imports; and other factors that are existing today.

MS. CHURNEY: So the conditions that existed in 2000 were atypical?

MR. TRUMP: I would not agree with that statement.

MS. CHURNEY: But you do agree that those conditions are not reflective of present conditions?

MR. TRUMP: The conditions of 2000 are not reflective of the conditions we experienced in 2001 for our sales in 2001. I do not believe that

1 the conditions of 2000 were atypical. And I do
2 not believe that they are significantly different
3 in 2001.

4 MS. CHURNEY: You don't believe a more
5 than 10 percent difference in capacity is not
6 significant?

7 MR. TRUMP: I don't believe that the
8 market conditions in 2000 are significantly
9 different than the market conditions in 2001.

10 MS. CHURNEY: On page 26 of your
11 testimony you indicate that the electrical output
12 generated by the existing facility helps maintain
13 safe and reliable levels of power generation for
14 the surrounding area.

15 Are you suggesting that Morro Bay and
16 the San Luis Obispo County would be left without
17 adequate, or with only unsafe or unreliable levels
18 of power if the existing plant were to cease
19 operations?

20 MR. TRUMP: I believe it would be the
21 California ISO's responsibility for insuring safe
22 and reliable power availability in the grid
23 throughout the grid no matter what location or
24 specific area of the grid in question.

25 MS. CHURNEY: So that isn't what you're

1 suggesting here?

2 MR. TRUMP: I believe the California ISO
3 would recognize that the power plant here helps
4 maintain voltage support in the local area.

5 MS. CHURNEY: On both pages 27 and 33 of
6 your testimony you indicate that Duke is now
7 planning for removal of asbestos in cleaning the
8 tanks in the tank farm part as part of maintenance
9 and operations. And that this does not require
10 CEC approval. Do you see that?

11 MR. TRUMP: Which paragraph are you
12 referring to?

13 MS. CHURNEY: It looks like the second
14 paragraph, second complete paragraph on page 27.

15 MR. TRUMP: That begins: Please note?

16 MS. CHURNEY: Yes.

17 MR. TRUMP: I see that paragraph.

18 MS. CHURNEY: And on page 33 the first
19 complete paragraph.

20 MR. TRUMP: The first paragraph that
21 beings: Tank farm demolition?

22 MS. CHURNEY: Correct.

23 MR. TRUMP: I see that paragraph, as
24 well.

25 MS. CHURNEY: Is there anything

1 preventing Duke from proceeding with this aspect
2 immediately so as not to continue to slow down the
3 process of scheduling for the new plant?

4 MR. TRUMP: We believe that in fact we
5 can remove the asbestos that's associated with a
6 lot of the piping systems, and that we can clean
7 the tanks in terms of the residual product in the
8 tanks as part of normal maintenance operations.

9 And --

10 MS. CHURNEY: I'm sorry, go ahead.

11 MR. TRUMP: No, I'm finished.

12 MS. CHURNEY: When would that occur?

13 MR. TRUMP: We anticipate that we can
14 actually begin that work shortly. We've actually
15 prepared documents that would go to contractors
16 called bid documents. And we've submitted those
17 to contractors for their responses to the proposed
18 scope of work.

19 MS. CHURNEY: And you note on page 27
20 that the anticipated groundbreaking for the new
21 units was in August of 2002. And that it depends
22 on Duke's board's approval this spring.

23 But then you go on to indicate that it's
24 certain that the board will not provide this
25 approval in time for a number of reasons.

1 Could you please describe what
2 uncertainties are being referenced here?

3 MR. TRUMP: I'm not in a position to
4 recommend to my management to take to the board
5 the consideration of a full notice to proceed on
6 the project until such time that the significant
7 permitting activities or licensing activities are
8 completed and finalized.

9 It would be not prudent of me to suggest
10 to the Duke board to entertain that discussion
11 until the project truly was viable because of
12 those approvals.

13 MS. CHURNEY: So it's not one of general
14 uncertainty in the market that's delaying the
15 decision of the board?

16 MR. TRUMP: There is general uncertainty
17 in the market which affects all of our decisions
18 in any power plant licensing throughout the
19 western states.

20 MS. CHURNEY: What is the basis for your
21 statement on pages 27 and 28 that the number of
22 people who can see the plant today and who will
23 see it in the future number in the thousands or
24 even hundreds of thousands?

25 MR. TRUMP: I thought we had indicated

1 we weren't going to get into the environmental
2 sections. I can respond generally to that, which
3 is a general statement of viewer impressions based
4 upon residents as well as people traveling on the
5 major roadways into and out of Morro Bay.

6 MS. CHURNEY: And so it's not your
7 contention that the new plant won't be visible
8 from Highway 1?

9 MR. TRUMP: It is my contention that
10 there will be many locations along Highway 1 that
11 the new facility will not be visible, and
12 therefore many people will no longer have a
13 viewing experience that includes the existing
14 facility.

15 MS. CHURNEY: On pages 37 and 38 of your
16 testimony you identify a number of responses Duke
17 has taken to the City's requested changes in its
18 July 13th letter, including the refurbishing of
19 the intake structure facade.

20 Has the City accepted any of Duke's
21 proposed alternatives in this regard?

22 MR. TRUMP: Our understanding is that we
23 presented three alternatives to the City of Morro
24 Bay in the form of a workshop, as well -- November
25 5. At that workshop numerous people from the

1 community who participated voiced their
2 preferences for one of three of those alternative
3 designs.

4 The City Council more recently adopted,
5 by way of resolution, language indicating that
6 they would like to see some consideration of some
7 additional design work in addition to the three
8 that I presented.

9 I don't have the wording of the
10 resolution in front of me. I know the resolution
11 was passed, and then I also know that the
12 resolution was further modified at the City
13 Council December 10th meeting with the addition of
14 some language around feasibility to make it more
15 consistent with the MOU between the parties.

16 MS. CHURNEY: And in addition the City
17 requested Duke to enter into an agreement with
18 local Native Americans to address issues of
19 concern to them. And Duke -- and your material
20 points only to an MOU with the local Shumash
21 Council. Has there been any agreement entered
22 into with the Salinans who are now intervenors?

23 MR. TRUMP: There is not an agreement at
24 this time with the Salinans.

25 MS. CHURNEY: Referring to the bottom

1 two boxes on page 38 of your testimony on the
2 right-hand side --

3 MR. TRUMP: I'm sorry, which box?

4 MS. CHURNEY: It's page 38, and the
5 bottom two boxes, right-hand side. Which of these
6 items identified by Duke are anything other than
7 mitigation for costs or damages expected to result
8 to the City?

9 MR. TRUMP: I'm sorry the boxes at the
10 bottom of page 38 that I see says using quiet pile
11 driving techniques.

12 MS. CHURNEY: Oh, we must have
13 differently numbered testimony. Oh, it's page 38.

14 MR. TRUMP: I'm looking at page 38.
15 Could you identify the row, the wording on the
16 left-hand box?

17 MS. CHURNEY: Okay, the reference in the
18 left hand is agree to address the City's public
19 service concerns.

20 MR. TRUMP: I see that box.

21 MS. CHURNEY: Okay. And the second box
22 is cooperate with the City to implement the City's
23 waterfront master plan.

24 MR. TRUMP: I see that box, as well.

25 MS. CHURNEY: Do you have the question?

1 MR. TRUMP: Would you repeat the
2 question for me, please?

3 MS. CHURNEY: Of the items identified on
4 the left-hand side by Duke, are there any items
5 other than mitigation for costs or damages
6 expected to result to the City from the project?

7 MR. TRUMP: Which box now are you
8 referring to, the first one that --

9 MS. CHURNEY: We can start with that
10 one.

11 MR. ELLISON: Let me clarify a question.
12 Is your question whether Duke agrees that all of
13 these provisions could be legally required as
14 mitigation?

15 MS. CHURNEY: No. The question is which
16 of these items are anything other than mitigation
17 for costs or damages that will be incurred as a
18 result of the project. Not special benefit to the
19 City.

20 MR. ELLISON: Well, I'm going to object
21 to the question on this basis, that I think it
22 assumes an incorrect fact. The agreement that we
23 have reached with the City is a negotiated
24 agreement that in many cases negotiated
25 disagreements about whether there were impacts to

1 be mitigated or not, and compromised those
2 disagreements.

3 So it's certainly fair game to ask any
4 questions about what these things are and how they
5 affect the project. But, with respect to the
6 agreement that we have with the City, these do not
7 necessarily represent agreements as between the
8 City and Duke as to underlying impacts or
9 mitigation.

10 PRESIDING MEMBER MOORE: I'm going to
11 sustain that. The City is a party and also a
12 sovereign entity here, and how they conduct their
13 political affairs and how they reach political
14 agreements really are none of my business. But
15 the actual fact of those are. And I will keep us
16 out of the zone of trying to understand or read
17 the mind of the City Fathers about the nature of
18 the agreements that they reach. So I'm going to
19 sustain that.

20 BY MS. CHURNEY:

21 Q Turning to page 40 of your testimony you
22 list a number of, again, reported benefits of the
23 project, many of which are the same as were set
24 forth earlier on page 38. The first one being an
25 environmentally more friendly power plant. Do you

1 see that?

2 MR. TRUMP: I do.

3 MS. CHURNEY: And what is the factual
4 basis for that statement?

5 MR. TRUMP: When I wrote that bullet
6 what I had in mind is the fact that for every
7 kilowatt hour of electricity produced the new
8 facility will use less resources.

9 MS. CHURNEY: And that's based on your
10 understanding of what the expert witnesses will be
11 testifying to; it's not based upon your expertise,
12 is that correct?

13 MR. TRUMP: It is based upon both.

14 MS. CHURNEY: And on page 41 of your
15 testimony you indicate that Duke will continue to
16 operate the existing plant indefinitely if the new
17 project does not go forward with upgrades as
18 planned, correct?

19 MR. TRUMP: Would you please refer me to
20 the paragraph?

21 MS. CHURNEY: It is the first full
22 paragraph under the heading ability to continue.

23 MR. TRUMP: We may have slightly
24 different page numbering based upon printouts of
25 electronic documents and things.

1 I'm on page 41.

2 MS. CHURNEY: There is a bold headnote,
3 ability to continue to operate the existing --

4 MR. TRUMP: I see that.

5 MS. CHURNEY: Okay, it's the paragraph
6 directly under that.

7 MR. TRUMP: Okay, I'm with you. I'm
8 sorry, would you repeat your question?

9 MS. CHURNEY: The testimony indicates
10 that Duke will continue to operate the existing
11 plant indefinitely if the new project does not go
12 forward with upgrades as planned. Is that your
13 testimony?

14 MR. TRUMP: Is that a question?

15 MS. CHURNEY: Yes. Is that correct?

16 MR. TRUMP: That statement is correct.

17 MS. CHURNEY: Okay. Given the delays
18 that you've indicated will occur in getting Duke's
19 board of directors to approve the new project,
20 will these planned upgrades be done for the
21 existing plant for operations during the interim
22 period before the new plant comes on line?

23 MR. TRUMP: I don't know the specific
24 upgrades that may or may not occur in the interim
25 period of time.

1 MS. CHURNEY: What about SCR
2 retrofitting?

3 MR. TRUMP: SCR retrofitting, per se, is
4 not required. The facility does operate under a
5 NOx emissions limitation, which changes. And I
6 believe it reaches its most stringent level at the
7 beginning of 2003.

8 I do not know whether or not that
9 emissions envelope will require the facility to
10 install SCR or not.

11 MS. CHURNEY: But if the delays continue
12 and 2003 comes and goes, is it your testimony that
13 whatever will need to be done by 2003 will be done
14 with the old plan?

15 MR. TRUMP: No, I don't think I
16 suggested that or said that.

17 MS. CHURNEY: Well, you did suggest that
18 Duke will do what is required pursuant to the
19 regulations, is that correct?

20 MR. TRUMP: Oh, very much so.

21 MS. CHURNEY: So that --

22 MR. TRUMP: But the regulations do not
23 require the retrofitting of the units with SCR.
24 It requires the meeting of a NOx cap.

25 MS. CHURNEY: Okay. I mean you could

1 cut back on emissions, as well?

2 MR. TRUMP: We have to meet the NOx cap.

3 MS. CHURNEY: Right. And Duke will do
4 what is required by the regulations in 2003 should
5 the new plant not be --

6 MR. TRUMP: Very much so. Very much so.

7 MS. CHURNEY: -- in operation? Could
8 you explain what automatic general control
9 services are?

10 MR. TRUMP: I --

11 MR. ELLISON: Do you mean automatic
12 generation control or --

13 MS. CHURNEY: Yes.

14 MR. TRUMP: I have a general
15 understanding of that service. I'd like Mr.
16 Cochran to answer that question because of his
17 operating experience at Morro Bay.

18 MS. CHURNEY: That's fine.

19 MR. COCHRAN: Automatic generation
20 control is another one of those ancillary services
21 that's very valuable to the Independent System
22 Operator.

23 And when a unit's available for
24 automatic generation control it means that it is
25 set up so that the governor control on its

1 turbine, the servomotor that drives that governor
2 can be positioned by receiving pulses directly
3 from Folsom or Alhambra, from the ISO's office.
4 And either cause the governor motor to go in the
5 raise or lower direction, and either increase or
6 decrease load to signals directly from the ISO.

7 And I'm proud to say Morro Bay has an
8 excellent history of operation available for
9 automatic generation control and has had for many
10 years. It's a very valuable service.

11 MS. CHURNEY: How do automatic
12 generation control services fit into the scheme of
13 spot market pricing, if they do?

14 MR. ELLISON: That's a very broad
15 question. I'm going to have to ask you to state
16 something more specific. We could go on for hours
17 about that.

18 PRESIDING MEMBER MOORE: Where are you
19 going with --

20 MS. CHURNEY: I'll withdraw that.

21 BY MS. CHURNEY:

22 Q I'm not sure whether this is to Mr.
23 Trump or Mr. Cochran, perhaps Mr. Cochran. But
24 there's also the statement made that the existing
25 facility does not have to operate at high levels

1 of capacity utilization to be economical.

2 Will that be true when the new plant
3 comes on line?

4 (Pause.)

5 BY MS. CHURNEY:

6 Q I'll rephrase that. Will the new plant
7 have the same automatic generation control
8 services?

9 MR. TRUMP: My understanding is it's
10 unlikely that the Cal-ISO will contract with Duke
11 Energy for those services with the new units,
12 given their inherent different operating
13 characteristics.

14 MS. CHURNEY: There was a timeline
15 included at the end of the testimony, and I'm not
16 sure who this should be directed at, perhaps Mr.
17 Trump.

18 Did you prepare that timeline?

19 MR. TRUMP: I had a member of our team
20 prepare it and I reviewed it.

21 MS. CHURNEY: That's attachment 1,
22 public outreach is what it's called.

23 MR. TRUMP: I've lived a lot of it.

24 MS. CHURNEY: And I just wanted to
25 clarify with respect to measure P, you refer to it

1 as a referendum; in fact, it was an initiative.
2 And it was also nonbinding and advisory, do you
3 disagree with that?

4 MR. TRUMP: I do not disagree with that.

5 MS. CHURNEY: There's also a reference
6 made to an environmental leaders group. This is
7 on page 50. And the date is December 6th. I
8 believe it's 1999, although we don't have --

9 MR. TRUMP: I see the reference.

10 MS. CHURNEY: -- the annual date. Okay.
11 The Coastal Alliance was specifically not invited
12 to join, is that correct?

13 MR. TRUMP: I do not have knowledge of
14 which parties or which groups were asked to
15 participate in the ELG. I was not part of that
16 process during its formation.

17 MS. CHURNEY: Does Mr. Cochran know
18 whether that's correct?

19 MR. COCHRAN: Yes, that is correct.

20 MS. CHURNEY: And what was the reason
21 for not inviting a member of the community to
22 participate in that?

23 MR. ELLISON: Objection, relevance.

24 MS. CHURNEY: Well, the relevance is
25 that they have attached this exhibit to

1 demonstrate community and public outreach, and so
2 I think as a member of the community who's been
3 very active in following this plant-siting
4 process, it is a relevant question.

5 PRESIDING MEMBER MOORE: Well, as far as
6 the motives, I don't think there's any way to be
7 able to try and ask the applicant about their
8 motives. And the Alliance is clearly represented
9 through the intervenor status. So, I would think
10 that if there is an environmental leaders group
11 they're far out-shadowed by the presence of the
12 Alliance in any case.

13 MR. ELLISON: Let me be clear about my
14 objection, it's twofold. One is relevance. The
15 mere fact that the meeting is mentioned in a long
16 narrative about public outreach doesn't make every
17 aspect of that meeting relevant.

18 But, secondly, I'm objecting on the
19 basis that it seems to assume that these witnesses
20 were involved in determining who was invited to
21 that meeting or not. And that they're even
22 capable of addressing the question, so --

23 PRESIDING MEMBER MOORE: Your objection
24 is sustained.

25 MR. ELLISON: -- it goes well beyond the

1 scope of the direct I guess is my point.

2 PRESIDING MEMBER MOORE: I understand.

3 BY MS. CHURNEY:

4 Q And for Mr. Trump, you have indicated
5 that you've had discussions with representatives
6 at Camp San Luis and you've been reassured that
7 there's no conflict with current security
8 requirements to Duke utilizing the area as a
9 laydown area. And that it was oral reassurance.

10 Have you requested something in writing
11 from Camp San Luis on that?

12 MR. TRUMP: We have not, based upon the
13 strength of their conviction that there, in fact,
14 would not be any conflict.

15 MS. CHURNEY: I have no further
16 questions.

17 PRESIDING MEMBER MOORE: Thank you. Let
18 me then ask if there's any redirect.

19 MR. ELLISON: No.

20 PRESIDING MEMBER MOORE: Redirect, no
21 redirect. All right, I'm going to turn to the
22 Energy Commission Staff and ask for your
23 presentation and witness. Ms. Lewis, you are the
24 witness, and I'll ask for you to be sworn.

25 //

1 Whereupon,

2 KAE LEWIS

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 PRESIDING MEMBER MOORE: Thank you.
7 Counsel.

8 MS. HOLMES: Thank you.

9 DIRECT EXAMINATION

10 BY MS. HOLMES:

11 Q Ms. Lewis, would you please state your
12 name for the record.

13 A My name is Kae Lewis; I'm Project
14 Manager for this particular siting case at the
15 Energy Commission.

16 Q And did you prepare the project
17 description portion of exhibit 115?

18 A Yes, I did.

19 Q And was a statement of your
20 qualifications included in exhibit 115?

21 A Yes, it was.

22 Q And did you also prepare the project
23 description portion of the errata that's been
24 identified as exhibit 116?

25 A Yes, I did.

1 Q And are the facts contained in your
2 testimony true and correct?

3 A Yes.

4 Q Do the opinions contained in your
5 testimony represent your best professional
6 judgment?

7 A Yes.

8 MS. HOLMES: The witness is available
9 for cross-examination.

10 PRESIDING MEMBER MOORE: Ms. Lewis, I'd
11 like you to briefly elaborate, if you would, on
12 the processes the Energy Commission uses to
13 sponsor public workshops. How people get
14 involved, what your involvement over the past
15 period of time has been since the inception of
16 this project from the first part through the
17 hiatus. And then the second part. And how you
18 either bring in or respond to public demands for
19 testimony or investigation in various areas.

20 And then following that I'd like to ask
21 you to talk briefly about the relationship of the
22 California Energy Commission to special
23 consultants that we use, that the Commission uses.
24 I guess I'm in my other role outside the staff.
25 And also to what have come to be called special

1 working groups, where we utilize those very select
2 services of specialists in the field to try and
3 get an independent opinion about how an issue is
4 affected by a project.

5 Thank you.

6 MS. LEWIS: Okay, the first topic that
7 you mentioned was --

8 PRESIDING MEMBER MOORE: Workshops.

9 MS. LEWIS: -- how we organize
10 workshops.

11 PRESIDING MEMBER MOORE: And you might
12 just review the nature of the workshops that
13 you've had so far, how people participate. And
14 then how you transmit the information to me in
15 order to allow me to make use of it in the
16 decision process.

17 MS. LEWIS: Staff actually can call
18 workshops during any stage of the process up until
19 we get to hearings. In some projects we'll have
20 workshops during data adequacy.

21 And I don't recall that that was done in
22 this particular project. I think the first set of
23 workshops that we had were in the data request
24 stage which was held, I believe, last February
25 after this project was deemed data adequate in mid

1 January.

2 And what we had done at that point was
3 to we had issued -- staff had issued data requests
4 to the applicant and the City of Morro Bay also
5 had issued data requests. And the applicant and
6 the staff, the City of Morro Bay and the
7 intervenor and other parties and the public were
8 then invited to attend a workshop to discuss the
9 responses to those data requests.

10 How people get invited to those
11 workshops is through our mailing lists. We had
12 mailing lists that involve the interested parties,
13 property owners, members of the public and
14 interested agencies.

15 Our next set of workshops was held after
16 the preliminary staff assessment was filed back in
17 May. And we had workshops on each topic that was
18 featured in the preliminary staff assessment.

19 And I also believe we did have a
20 workshop earlier than that on topics involving
21 visual resources.

22 It's common for us, if there's a
23 particular issue that where a lot of opinions and
24 so forth are being voiced, and there might be some
25 contention, you know, we can call a workshop at

1 any time. And I believe we did that for visual
2 resources and for cultural resources even before
3 the preliminary staff assessment was out.

4 But I think our last set of workshops
5 that the staff sponsored in this particular case
6 was back in June when we had a long set of
7 workshops over several weeks for all the topics
8 that were in the preliminary staff assessment.

9 Does that answer --

10 PRESIDING MEMBER MOORE: Did you have a
11 workshop that addressed the issue of project
12 description, or that included it?

13 MS. LEWIS: I don't recall that there
14 was a separate workshop for project description.

15 PRESIDING MEMBER MOORE: And would you
16 just elaborate very briefly on the process that
17 allows us to use special staff as consultants, and
18 the special working groups?

19 MS. LEWIS: Yes. The Energy Commission,
20 because of an enormous workload which has arisen
21 over the last two years, has had to rely
22 extensively on technical consultants.

23 And we do have a contract, our prime
24 contractor is Aspen Environmental Group. And they
25 are functioning as technical experts, as well as

1 helping us with some project management work, as
2 well, and clerical.

3 And they subcontract to many other
4 companies to provide technical services. And
5 these people function as staff. They attend the
6 workshops; they write the testimony; and they
7 present their testimony at hearings.

8 PRESIDING MEMBER MOORE: And we've
9 convened the use of a special working group --

10 MS. LEWIS: The special working group
11 that I think you're referring to is the technical
12 working group. I believe it originated in the
13 Moss Landing case. They needed technical experts
14 in aquatic resources.

15 So there was three --

16 PRESIDING MEMBER MOORE: I don't need to
17 have you go into the details of what they're
18 working on. I just want to know the relationship
19 to our staff in terms of preparing all this.

20 MS. LEWIS: Um-hum. They function as
21 staff in that they advise us. They can present
22 testimony and the offers of testimony. And also
23 work with other agencies.

24 PRESIDING MEMBER MOORE: Thank you. Let
25 me turn to the applicant and ask if you have

1 cross-examination, Mr. Ellison?

2 MR. ELLISON: We do not.

3 PRESIDING MEMBER MOORE: Thank you. The
4 City?

5 MR. ELIE: Thank you.

6 CROSS-EXAMINATION

7 BY MR. ELIE:

8 Q Ms. Lewis, you were here for Mr. Trump
9 and Mr. Cochran's testimony. You heard Mr. Trump
10 talk about the dedications of land?

11 A Yes.

12 Q Is there any particular reason why that
13 was not included in the project description?

14 A The issue of land dedications is going
15 to be handled in the land use section of the FSA.

16 Q So you felt it wasn't necessary to also
17 include it here?

18 A There's a number of project features,
19 some of which are mentioned in my project
20 description, and some of which were not. The
21 purpose of the project description, that is that
22 the staff sponsors in the FSA is very much an
23 overview; it's drawn from the AFC and from other
24 submittals from the applicant, subsequent
25 submittals. It's not intended to be totally

1 exhaustive.

2 Q Mr. Valkosky didn't steal my thunder
3 twice, he only stole it once, so I'll ask you the
4 same question he asked Mr. Trump. Do you disagree
5 at all with the recommendation in Mr. Algert's
6 testimony? Are you familiar with that? I guess I
7 should ask you that first.

8 A Yes, I am. I'm going to refer that to
9 our land use specialist because it's handled
10 exhaustively in that section.

11 MR. ELIE: No further questions.

12 PRESIDING MEMBER MOORE: Thank you. For
13 the intervenors, CAPE?

14 DIRECT EXAMINATION

15 BY MS. CHURNEY:

16 Q We've heard earlier in testimony today
17 that the project's actual generating capacity will
18 differ from and likely exceed the net 1200 figure.

19 MR. ELLISON: Objection, that misstates
20 the testimony.

21 PRESIDING MEMBER MOORE: I'm going to
22 sustain that. You've heard testimony that the
23 applicant is planning for an output of 1200
24 megawatts, and that there are selected instances
25 where that may go over. If I'm not misstating the

1 testimony. So, --

2 MS. CHURNEY: Well, I'll just refer the
3 witness to her language on page 3-1 of the FSA
4 then.

5 BY MS. CHURNEY:

6 Q The project's actual generating capacity
7 will differ from and likely exceed this figure,
8 net 1200 megawatts. If the project's actual
9 generating capacity should exceed this nominal
10 rating, no conditions of certification would be
11 violated. Do you see that?

12 A Yes.

13 Q What has staff been using in terms of
14 impact analysis as far as the megawatts are
15 concerned?

16 A I don't understand that question.

17 PRESIDING MEMBER MOORE: Asking you the
18 base number that you're using for your
19 calculations.

20 MS. LEWIS: You would have to refer to
21 the different technical areas.

22 BY MS. CHURNEY:

23 Q So it could vary depending on the
24 technical area?

25 A You would have to inquire of each

1 technical specialist as to what number that they
2 used.

3 PRESIDING MEMBER MOORE: Well, Ms.
4 Lewis, I think it's a fair question to ask for
5 what planning purposes you're using in your
6 document, what's the number that you assumed as
7 the base for your calculations.

8 And if it differs in some section then
9 the specialist is going to be explicit about that.
10 But what number do you use?

11 MS. LEWIS: The only part of the FSA
12 that I'm responsible for is this project
13 description. And I have 1200 written here with
14 the caveat statement. That's the only number I
15 can sponsor.

16 BY MS. CHURNEY:

17 Q Okay. A further statement in the FSA on
18 page 3-2 is as follows: Based on construction
19 beginning in late 2002 commercial operation will
20 begin in late 2004.

21 Has Duke advised staff of any updated
22 schedule at this point?

23 A There is a new schedule in their latest
24 testimony. I don't believe it's different from
25 what is written here, or it might be slightly

1 different.

2 Q Was this something submitted in writing
3 to staff?

4 A Well, I'm referring to their testimony
5 that Mr. Trump and Mr. Cochran just spoke from.

6 Q Okay.

7 A Which came out after the FSA.

8 Q Right, thank you. What is the
9 operational lifetime used by staff in making a
10 CEQA assessment for this project?

11 A There's a range of numbers used. We
12 normally talk about an operational life of 30
13 years or more. But, in each technical section
14 they may use a little, some variation of that
15 number.

16 There was a discussion of this earlier
17 when Mr. Baker was on the stand.

18 Q So it's a range?

19 A Yes.

20 Q Is the interim operation of the old
21 plant during construction of the new plant
22 considered part of the project as far as your
23 analysis, staff's analysis is concerned?

24 A Could you repeat that?

25 Q Yes. Is the interim operation of the

1 old plant during construction of the new plant
2 considered to be part of the quote, project, from
3 a staff analysis standpoint?

4 And I'll give you the example of the
5 impacts on visual.

6 A I still didn't catch what you meant.

7 Q Right. Is the interim operation of the
8 old plant --

9 A Um-hum.

10 Q -- during construction of the new plant
11 considered to be part of the project?

12 A Interim operation of the --

13 MS. HOLMES: Can I ask for a
14 clarification? Are you asking whether or not
15 staff evaluated the impacts of construction on the
16 new facility in conjunction with the continuing
17 operation of the existing facility for purposes of
18 identifying significant impacts?

19 MS. CHURNEY: Correct.

20 MS. LEWIS: I believe so, yes.

21 BY MS. CHURNEY:

22 Q Did staff take into account the ballot
23 initiative that you heard described earlier this
24 afternoon by Mr. Trump in its analysis of the
25 impacts of this project?

1 MS. HOLMES: Again I'm going to ask for
2 another clarification. Does she mean with respect
3 to the project description?

4 MS. CHURNEY: Yes.

5 MS. LEWIS: I do not think so, unless
6 you want to be more specific about how.

7 BY MS. CHURNEY:

8 Q Well, I'll just give you an example.
9 Did staff take into account that with respect to
10 the ballot initiative the AFC was filed only
11 approximately two weeks prior to the election
12 date. And would that impact what consideration,
13 high or low, staff would give to the votes --

14 MS. HOLMES: I'm going to object on the
15 grounds of relevance. I --

16 PRESIDING MEMBER MOORE: Yeah, I'm going
17 to sustain that on the basis of the Florida
18 election. And --

19 (Laughter.)

20 PRESIDING MEMBER MOORE: -- we're not
21 going to second-guess that one. So, I'm going to
22 ask you to go on to your next question.

23 MS. CHURNEY: I have no further
24 questions.

25 PRESIDING MEMBER MOORE: Thank you. All

1 right, Mr. Ellison.

2 MR. ELLISON: Let me just follow up on
3 that questioning to ask staff --

4 PRESIDING MEMBER MOORE: I'm sorry, I
5 took you out of turn. Let me go back to --

6 MS. HOLMES: This is my witness.

7 PRESIDING MEMBER MOORE: Yeah, and it's
8 my fault for --

9 MR. ELLISON: Well, can I -- point of
10 order.

11 (Laughter.)

12 PRESIDING MEMBER MOORE: All right, I'll
13 allow a point of order.

14 MR. ELLISON: What I was going to ask,
15 and I'll direct this to Ms. Holmes, whether she
16 would provide the same clarification of staff's
17 project description testimony relative to its
18 testimony in all the other topic areas that Duke
19 was asked to provide.

20 And specifically I'm asking for this in
21 the context of questions such as about the 1200,
22 you know, nominal megawatts.

23 So the question is was it the intention
24 of staff in presenting this project description,
25 to provide a general overview --

1 PRESIDING MEMBER MOORE: Mr. Ellison,
2 you're not asking a point of order. You're asking
3 a question. Why don't you ask me your point of
4 order, and let me deal with it.

5 MR. ELLISON: Well, the point of order
6 goes to this issue about what is the purpose of
7 the project description. And in my view some of
8 the cross-examination went beyond the line of what
9 we had discussed about examining project
10 description witnesses on the specific issues.

11 In this case, the example I gave you,
12 the output of the plant under different ambient
13 conditions was certainly a matter of discussion in
14 the specific areas we had this morning.

15 So to the extent that people are trying
16 to remake that record in the context of project
17 description, I have a problem with that.

18 PRESIDING MEMBER MOORE: Well, and as a
19 point of order I think it's valid. And I allowed
20 the question because I thought it was broad enough
21 to still be contained within the category of
22 project description, such as we've described it.

23 So, I'm not going to ask Ms. Holmes or
24 Ms. Lewis to respond to that, but I'll take
25 responsibility for having allowed a question that

1 did go farther than the very general description
2 that we'd asked for. But I don't believe that any
3 harm ensued.

4 And that question may get clarified by
5 questions from up here as we proceed. So, with
6 that, let me ask first, though, before we come to
7 those questions, whether there's any redirect.

8 MS. HOLMES: I have just one question
9 for Ms. Lewis.

10 REDIRECT EXAMINATION

11 BY MS. HOLMES:

12 Q Do you recollect the discussion of
13 project life a few minutes ago while you were
14 being cross-examined by intervenor CAPE?

15 A Yes.

16 Q Is it your understanding that the reason
17 there is not a definitive project life included in
18 the project description is that in collecting your
19 summary from other technical staff there was no
20 need to establish such a limit?

21 A Yes, that's true.

22 MS. HOLMES: That's my only question.

23 PRESIDING MEMBER MOORE: All right.

24 Recross-examination.

25 //

1 RE CROSS-EXAMINATION

2 BY MR. ELLISON:

3 Q Ms. Lewis, let me just ask you one
4 question. With regard to the cross-examination on
5 the 1200 nominal megawatts and the statement about
6 the, in your testimony that the -- and I'm
7 paraphrasing here, but that the output of the
8 plant would likely exceed that.

9 Let me ask you two questions. First of
10 all, were you intending in any way to supplant the
11 testimony of staff witnesses that we heard this
12 morning on that same subject?

13 A No, I wasn't.

14 Q And secondly, with regard to your
15 statement of likely to exceed, did you intend to
16 mean likely to exceed at specific moments in time,
17 or did you mean likely to exceed on a continuous
18 operating basis?

19 A No, at moments in time.

20 MR. ELLISON: Thank you.

21 PRESIDING MEMBER MOORE: Recross?

22 MR. ELIE: No more questions.

23 PRESIDING MEMBER MOORE: And the
24 intervenor CAPE?

25 MS. CHURNEY: Yes, I'd just like to

1 clarify one comment that she just made.

2 RE CROSS-EXAMINATION

3 BY MS. CHURNEY:

4 Q And that is you just stated that there
5 was no need to have a definitive project life
6 specified in your project description section
7 because, and I just want to make sure I understand
8 it, is it because that the project life would be
9 dealt with in each of the subsequent separate
10 topic sections?

11 A There's no requirement that -- there's
12 no CEQA-based requirement that requires that we
13 make that estimate, which would be, of course,
14 very difficult to do.

15 MS. CHURNEY: Thank you.

16 PRESIDING MEMBER MOORE: All right.
17 Thank you. Mr. Valkosky has a question.

18 HEARING OFFICER VALKOSKY: Yeah, Ms.
19 Holmes, I'd like to follow up on Mr. Ellison's
20 earlier question. Do you stipulate similarly as
21 applicant has, that Ms. Lewis was offered for the
22 purpose of providing a general overview, rather
23 than as an expert in each of the various project
24 elements contained in the topic project
25 description?

1 MS. HOLMES: That's correct.

2 HEARING OFFICER VALKOSKY: Thank you.

3 PRESIDING MEMBER MOORE: Thank you. All
4 right, let's turn then to the City's presentation.
5 Are you sponsoring a witness?

6 MR. ELIE: Yes, we are. Mr. Algert.

7 PRESIDING MEMBER MOORE: All right. He
8 will need to be sworn, please. Thank you, Ms.
9 Lewis.
10 Whereupon,

11 RICK ALGERT
12 was called as a witness herein, and after first
13 having been duly sworn, was examined and testified
14 as follows:

15 PRESIDING MEMBER MOORE: Thank you.
16 Counsel.

17 MR. ELIE: Thank you.

18 DIRECT EXAMINATION

19 BY MR. ELIE:

20 Q Mr. Algert, exhibit 118 to --

21 PRESIDING MEMBER MOORE: Do you want to
22 identify your witness, background and --

23 MR. ELIE: Yes, thank you.

24 BY MR. ELIE:

25 Q Mr. Algert, why don't you tell us what

1 you do for a living.

2 A My name is Rick Algert, A-l-g-e-r-t.

3 I'm the City of Morro Bay Harbor Director.

4 Q How long have you been the City of Morro
5 Bay Harbor Director?

6 A Since 1990, over ten years.

7 Q Does that job include management and
8 administration of tideland trust leases?

9 A Yes, it does.

10 Q What does that mean?

11 A Well, the property management function
12 dealing with state tidelands properties.

13 Q Are there state tidelands properties
14 that are impacted by the Duke project?

15 A The outfall, existing outfall is on
16 state granted tidelands.

17 Q Is that something that's the
18 responsibility of -- your responsibility as Harbor
19 Director?

20 A Yes. It has been. It hasn't needed
21 much management up until this point.

22 (Laughter.)

23 BY MR. ELIE:

24 Q Now, exhibit 118 to these proceedings is
25 your testimony. Was that prepared at your

1 direction?

2 A Yes, sir.

3 Q Do you have any changes, corrections or
4 additions to that testimony?

5 A No.

6 Q And are the facts and exhibits contained
7 therein true and correct to the best of your
8 knowledge?

9 A Yes.

10 Q There seemed to be a question earlier --
11 well, were you here when Mr. Trump testified at
12 questioning from the panel?

13 A In this area, I was.

14 Q Okay. And did you -- what is the basis
15 of your opinion or your statement that the 50-year
16 agreement may not be extended or held over after
17 the November 14, 2004 expiration?

18 A The granting statutes are quite specific
19 and clear. The grantee has the right to enter
20 into agreements such as leases for a period up to
21 50 years, but may not enter into agreements in
22 excess of 50 years.

23 Q And those are the statutes that are
24 attached as exhibits to your statement?

25 A Yes.

1 MR. ELIE: I'd offer exhibit 118 and the
2 exhibits.

3 PRESIDING MEMBER MOORE: Any objection?

4 MS. HOLMES: No objection from staff.

5 PRESIDING MEMBER MOORE: Applicant?

6 MR. ELLISON: No objection.

7 PRESIDING MEMBER MOORE: Intervenor?

8 MS. CHURNEY: No objection.

9 PRESIDING MEMBER MOORE: Thank you. So
10 entered.

11 MR. ELIE: The witness is available.

12 PRESIDING MEMBER MOORE: Any questions,
13 applicant, for the City's witness?

14 MR. ELLISON: Just one question.

15 CROSS-EXAMINATION

16 BY MR. ELLISON:

17 Q With respect to the last answer that you
18 gave, were you intending to render a legal
19 opinion?

20 A No. That was my interpretation of the
21 granting statutes.

22 Q Okay, your interpretation as a lay
23 person, if you will?

24 A Yes. I am not a lawyer.

25 MR. ELLISON: That's all I have, thank

1 you.

2 PRESIDING MEMBER MOORE: Thank you. Ms.
3 Holmes?

4 MS. HOLMES: No questions.

5 PRESIDING MEMBER MOORE: Fine.
6 Intervenors, CAPE?

7 MS. CHURNEY: No questions.

8 PRESIDING MEMBER MOORE: Thank you.
9 With that, your witness is excused. Thank you
10 very much.

11 Well, that brings us to the part of the
12 testimony that is public testimony on this. Is
13 there any member of the public who would like to
14 address us on the question of project description?

15 MS. CHURNEY: Excuse me, before we get
16 to that, I'm sorry, we had a witness, Jack
17 McCurdy, who you have placed his testimony into
18 compliance, although it really doesn't relate to
19 compliance.

20 And some of the issues that he addresses
21 were brought up during the course of project
22 description. So I don't know whether you might
23 want to consider his first.

24 PRESIDING MEMBER MOORE: Actually you
25 know what I was going to do was just allow us to

1 break for dinner.

2 So with your permission I think what, if
3 it's okay, just allow that to flow into
4 compliance. Is that all right?

5 MS. CHURNEY: That's acceptable, sure.

6 PRESIDING MEMBER MOORE: Okay. Well,
7 then I'm not seeing anyone come up from the public
8 to address us on -- oh, there is someone. Okay.
9 Good. Come on up and that microphone right there,
10 I believe, is live. If you just want to --

11 (Laughter.)

12 PRESIDING MEMBER MOORE: If you wouldn't
13 mind just identifying yourself for our record.

14 MR. SMITH: Yes, I'm Richard Smith. Can
15 you spell that one?

16 (Laughter.)

17 MR. SMITH: And I wasn't prepared to ask
18 this, I just want to ask it generally. I was
19 concerned, you mentioned the advisory initiative
20 and the MOU, and I just wanted --

21 PRESIDING MEMBER MOORE: Actually you
22 won't be able to ask anyone any questions. You
23 can make a statement to us.

24 MR. SMITH: Okay, I was confused --

25 PRESIDING MEMBER MOORE: You can't --

1 not open for questions.

2 MR. SMITH: Okay, let me just make sure
3 that it's clear, as a voter, that I understood.
4 That advisory board vote was based on certain
5 conditions being found. The MOU described at
6 least some of those regarding specifically there'd
7 be improvements in air quality and improvements in
8 water. I don't have the wording.

9 But I just wanted it to be clear that if
10 we find that there are problems in those areas,
11 certainly as a voter then I wouldn't expect the 64
12 percent vote to go forward as evidence of support
13 of the community.

14 PRESIDING MEMBER MOORE: Okay, thank
15 you. Appreciate that. Anyone else who'd like to
16 make a point on project description from the
17 public.

18 All right, seeing none, let me ask very
19 generally, I think everyone would probably like a
20 dinner break, probably like a stretch from this,
21 in any case.

22 Is an hour good enough for dinner, or do
23 we need more time for a dinner break? Because
24 we're going to continue into the evening.

25 So, all right, let's meet back here at

1 15 to seven, then, and we'll reconvene at that
2 time.

3 Thank you.

4 (Whereupon, at 5:45 p.m., the hearing
5 was adjourned, to reconvene at 6:45
6 p.m., this same evening.)

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1 EVENING SESSION

2 6:55 p.m.

3 PRESIDING MEMBER MOORE: Call the
4 hearing back to order. All right, we're going to
5 reconvene following our dinner break for the
6 December 17th evidentiary hearings.

7 We have one topic left for tonight, plus
8 a scheduling conference that we'll conduct
9 immediately following this item.

10 The last item for tonight is that of
11 compliance -- I'm sorry, counsel?

12 MS. HOLMES: If I could just take care
13 of some housekeeping matters. We failed to move
14 in the project description portions of exhibit 115
15 and 116. If we could do that at this time?

16 PRESIDING MEMBER MOORE: Is there any
17 objection to moving those into the record? Mr.
18 Ellison?

19 MR. ELLISON: No.

20 PRESIDING MEMBER MOORE: City?

21 MR. SCHULTZ: No.

22 PRESIDING MEMBER MOORE: And for the
23 intervenors, CAPE?

24 MS. CHURNEY: No objection. Has the
25 applicant already moved its evidence?

1 PRESIDING MEMBER MOORE: Yes, they have.

2 MS. CHURNEY: Okay, I guess I have a
3 question that I should have raised at that time.

4 PRESIDING MEMBER MOORE: Okay.

5 MS. CHURNEY: And that is with respect
6 to --

7 PRESIDING MEMBER MOORE: Well, let me
8 take care of this first.

9 MS. CHURNEY: Okay.

10 PRESIDING MEMBER MOORE: Those are moved
11 into the record without objection.

12 Now, you have a question on applicant's
13 record?

14 MS. CHURNEY: Right. Did that include
15 the slides that were shown during the course of
16 the testimony?

17 PRESIDING MEMBER MOORE: Yes, it did.
18 And I tried to make sure that we called those out
19 and indicated that they were part of the record,
20 and they were also part of the packets that have
21 been submitted.

22 MS. CHURNEY: Okay. The Coastal
23 Alliance has not received copies of those slides,
24 and we'd simply request that they be provided.

25 MR. ELLISON: You know, there have been

1 several statements here about the Coastal Alliance
2 not having received copies of things. This is
3 another one.

4 Those slides were included and served
5 with the testimony that was sent out to all
6 parties. There were a number of other statements
7 today about the Coastal Alliance not having
8 received documents that we believe were docketed
9 and served, as well.

10 We can resolve these things case by
11 case, but in --

12 PRESIDING MEMBER MOORE: Yes. Well, --

13 MR. ELLISON: -- this case I know that
14 those things were served with the testimony.
15 They're part of the testimony.

16 PRESIDING MEMBER MOORE: Well, and let
17 me just say it's concern enough to me, I'm not
18 trying to impugn any record keeping or people's
19 transfer of information, but I have appointed a
20 special envoy to look into this. And Mr. O'Brien
21 will be doing that during this week to find what's
22 happened to the missing records and where have
23 they gone and how can we straighten it out.

24 So, I'm taking it very seriously, and we
25 will attempt to rectify whatever is mysteriously

1 taking away the documents.

2 Thank you. All right, let's move to
3 compliance. And in this topic we have four sets
4 of witnesses that will be coming up.

5 Mr. Ellison, I'm going to turn to you
6 and ask for your first witness.

7 MR. ELLISON: We have two pieces of
8 testimony on this, and subject to his concurrence,
9 I'm going to ask Mr. Trump to represent both of
10 them.

11 The first is entitled general conditions
12 including compliance monitoring. And the second
13 is entitled facility closure. The first appears
14 at page 55 of exhibit 117, and the second
15 commences on page 64.

16 Mr. Trump is previously sworn.

17 DIRECT EXAMINATION

18 BY MR. ELLISON:

19 Q Mr. Trump, do you have those two pieces
20 of testimony before you?

21 A I do.

22 Q Let me ask you with respect to both of
23 them were these prepared by you or at your
24 direction?

25 A They were.

1 Q Do you have any corrections that you
2 wish to make to either of those pieces of
3 testimony?

4 Actually, before I ask you that, let me
5 back up. With respect to the compliance
6 monitoring portion of the testimony have you
7 reviewed the staff errata to their testimony that
8 I believe is identified as exhibit 124?

9 A I have.

10 Q Okay. In light of that staff errata do
11 you have any changes that you would make, or would
12 you describe how that affects your testimony on
13 compliance monitoring?

14 A I'm referring now to our testimony that
15 begins on page 55 in which we describe the
16 relationship between the various definitions and
17 milestones between those proposed by the Energy
18 Commission and those that are a part of our
19 proposed agreement to lease.

20 I'll note, however, that our testimony
21 was written and filed before we had the benefit of
22 the errata from the Energy Commission Staff.
23 Because of those changes, it affects the issues
24 that we've identified as otherwise being
25 substantive, we don't believe they're no longer

1 relevant based upon the errata.

2 And I'm looking at now page 58. And the
3 issues which no longer are relevant in our view
4 are issue number two, page 58; page 59, issue
5 number three; issue number four; and issue number
6 five. Issues numbers one and six are still
7 relevant in our interpretation based upon our
8 reading and understanding of the errata.

9 Q With that understanding, are there any
10 other additions or corrections that you would like
11 to make to either the two pieces of testimony that
12 we've been discussing?

13 A No.

14 Q And with those changes are the facts
15 contained in both of these pieces of testimony
16 true and correct to the best of your knowledge?

17 A They are.

18 Q And are the opinions therein your own?

19 A Yes, with the inclusion of the other
20 witness in each case of the testimony.

21 MR. ELLISON: Okay, in that case I would
22 like to move the portion of the testimony of
23 exhibit 117 beginning at page 55, including the
24 exhibits incorporated by reference therein, which
25 are the portions of the application for

1 certification identified on page 56. And those
2 are, the application for certification is exhibit
3 4.

4 And exhibit 95, which is the draft
5 agreement to lease between the City of Morro Bay,
6 which is already in evidence, and also
7 incorporated here.

8 And then secondly would also like to
9 move the testimony regarding facility closure,
10 which begins at page 64 from exhibit 117; and that
11 includes portions of the application for
12 certification exhibit 4; it also includes exhibit
13 number 38, responses 212, 213; and again, it
14 includes the previously admitted exhibit 95.

15 MR. TRUMP: One note is on the draft
16 agreement to lease, we make reference to two
17 different dates. It's the same exhibit, but
18 unfortunately, I guess we've stated that one being
19 August 22nd and one being August 21st. It's the
20 same document.

21 PRESIDING MEMBER MOORE: Does that
22 conclude all the exhibits, Mr. Ellison?

23 MR. ELLISON: It does.

24 PRESIDING MEMBER MOORE: Any objection
25 to moving those into the record? Staff?

1 MS. HOLMES: No objection.

2 PRESIDING MEMBER MOORE: No. City?

3 MR. SCHULTZ: No.

4 PRESIDING MEMBER MOORE: Intervenors

5 CAPE?

6 MS. CHURNEY: I have a point of
7 clarification on exhibit 38.

8 PRESIDING MEMBER MOORE: All right.

9 MS. CHURNEY: Does that include only the
10 written testimony responsive to 212 and 213 and
11 not the attachments?

12 MR. ELLISON: It includes the entire
13 data request response to the two questions posed
14 there, 212 and 213.

15 MS. CHURNEY: Okay. There was attached
16 to that data request response a letter from a
17 third party, Brian Walton. And I don't have it
18 here in front of me; I'm not sure whether that was
19 in response to those two data requests. But I
20 would object to that being included.

21 PRESIDING MEMBER MOORE: Was that letter
22 docketed separately?

23 MR. ELLISON: It was docketed or should
24 have been docketed, and I don't know any reason
25 that it wasn't, with the data request.

1 PRESIDING MEMBER MOORE: And so it's
2 already in the record. That letter, then if it's
3 docketed, is already in the record.

4 MR. ELLISON: Well, it's in the
5 Commission's record as far as having been docketed
6 is concerned. It is not yet in evidence here. I
7 understand that CAPE is objecting to its admission
8 into evidence.

9 We, in turn, would object to our data
10 responses being cherry-picked by CAPE, and having
11 only parts of them come in. We think that the
12 entire data request response --

13 PRESIDING MEMBER MOORE: Right.

14 MR. ELLISON: -- ought to come in or not
15 come in, as a whole.

16 PRESIDING MEMBER MOORE: Mr. Ellison,
17 what I'm trying to understand is whether or not
18 when that was originally docketed it included that
19 letter. If it did, then I'm not going to allow it
20 to be cherry-picked, thank you very much.

21 But if it came in separately then we
22 might have an argument.

23 MR. ELLISON: My understanding is that
24 it did include, at the time, that letter.

25 PRESIDING MEMBER MOORE: Well, then

1 that's --

2 HEARING OFFICER VALKOSKY: A question
3 for CAPE. Are you contending that you did not
4 receive the letter, or that it contains
5 objectionable material?

6 MS. CHURNEY: That it's hearsay unless
7 that witness is produced and cross-examined.

8 PRESIDING MEMBER MOORE: Well, let me
9 understand. Is it your understanding that that
10 letter came in -- it came in at the same time and
11 was attached to the data request?

12 MS. CHURNEY: Yes, it was attached to
13 the data request.

14 PRESIDING MEMBER MOORE: All right, I
15 will note for the record that it is not
16 represented by the person who wrote the letter,
17 and I'm going to allow it to come into evidence.

18 HEARING OFFICER VALKOSKY: I'd just like
19 to clarify that the hearsay nature, if it is such,
20 as represented, would affect the weight the
21 Committee can accord, not the admissibility,
22 itself.

23 PRESIDING MEMBER MOORE: Yeah, and let
24 me just make one other point that might
25 differentiate this from a court hearing where

1 there are different procedures in effect.

2 My objective here is to get as much
3 information on the record that will allow me to
4 make as reasonable a decision as is possible. I
5 intend to be as consistent about that as I can.
6 And to the extent that information is on the
7 record, is responded to, I'm typically going to
8 rule to allow it to come in where I can use it
9 later on.

10 I'm not going to be very comfortable
11 with things that attempt to tease apart a piece of
12 information that could be useful on either side
13 that can be dealt with by good common sense, as
14 opposed to a very strict adherence to rules of
15 evidence.

16 I want to be able to have as much in
17 front of me when writing the decision as possible.

18 Mr. Ellison, is your witness available
19 for questioning?

20 MR. ELLISON: No, not just yet. I want
21 to ask the witness to summarize the testimony, and
22 in particular as he just mentioned, there are two
23 issues which are identified as issues number one
24 and number six that in which we do have
25 recommended changes to the conditions of the FSA.

1 BY MR. ELLISON:

2 Q And so I would like to ask Mr. Trump to
3 briefly summarize those changes.

4 A I'm referring now to my testimony that
5 begins on page 55, general conditions including
6 compliance monitoring, where we've set out a
7 discussion of the relationship of the compliance
8 activities. And more importantly, the definitions
9 and milestones as they relate to the proposed
10 agreement to lease. And also those proposed by
11 the staff in the FSA.

12 We see no conflict between the
13 definitions as set forth in the FSA, and those
14 that Duke and the City have discussed as part of
15 the agreement to lease.

16 Also, we have described in our testimony
17 the milestones that have been established in that
18 proposed agreement to lease for the program or the
19 project. And, again, have noted that they are not
20 in any way in conflict with the FSA. And in
21 particular, are not in conflict with the FSA as
22 modified with the staff's errata.

23 We've noted in issue number one on page
24 58 that a note that there are numerous -- there
25 are several conditions, proposed conditions of

1 certification, where it is most appropriate and
2 natural that various clients' activities be
3 handled by phase of project, given the nature of
4 the project.

5 So that it would be not worthwhile to
6 have certain plans done all at one time, but that
7 they should be appropriate to the phase of the
8 project. For example, tank demo, then the
9 construction of new units, and then the final
10 compliance or the demolition of the facility.

11 And so we'd note that the final
12 conditions of certification should, in fact,
13 reflect the nature of the activities, the nature
14 of the planning given the five-year program as
15 proposed by the applicant.

16 Secondly, again as I've noted, issue
17 numbers two, three, four and five, we believe are
18 superseded by the staff's errata, making those
19 points no longer relevant, given the errata.

20 We'd note in issue number six regarding
21 delegate agencies, we want to point out that Duke
22 Energy and the City of Morro Bay have agreed in
23 the agreement to lease, in the proposed agreement
24 to lease, that the City will not perform the
25 function of the CBO. And we support that

1 position. It's an important position for us. So
2 we'd note that in issue number six on page 62.

3 Those are my only comments on the one
4 section of general conditions including compliance
5 monitoring.

6 Would you like me to summarize the
7 facility closure, as well, or --

8 Q Well, let me just ask you, with respect
9 to facility closure, are there any concerns that
10 Duke has with respect to the staff's proposed
11 conditions of certification?

12 A There are none.

13 Q Now, let me ask you questions, and these
14 questions are addressed to both pieces of
15 testimony, so I'm just going to refer to
16 compliance generally.

17 With respect to compliance, are there
18 any significant adverse environmental impacts?

19 A No, there are not.

20 Q And are there any instances that you
21 know of where the project, with respect to this
22 topic, does not comply with an applicable law,
23 ordinance, regulation or standard?

24 A There's no instances that I know of
25 where that would be the case.

1 Q And lastly, one minor correction. If I
2 can direct your attention to the closure portion
3 of your testimony on page 69, based on the draft
4 that I have. The paragraph beginning, the last
5 paragraph above areas in dispute, beginning: The
6 FSA includes one condition of certification
7 related to facility closure. Do you see that?

8 A I do.

9 Q And then the second line it refers to a
10 facility closure decommissioning plant. Should
11 that be plan without the "t"?

12 A That should be.

13 MR. ELLISON: That concludes the
14 testimony, thank you.

15 PRESIDING MEMBER MOORE: Thank you, Mr.
16 Ellison. Mr. Valkosky has a question for you.

17 HEARING OFFICER VALKOSKY: Thank you.
18 Could you explain to me once again your concerns
19 under issue one? And specifically what I would
20 like to know is do you intend page 58, issue one,
21 to be a general position that specific conditions
22 of certification should be changed appropriately,
23 or is this just a statement of your intent? And
24 do you intend in each individual topic area to
25 point out for the Committee and the rest of the

1 parties' benefits which conditions of
2 certification you may wish modified?

3 MR. TRUMP: We intend that each of our
4 witnesses will be clear and emphatic about which
5 specific conditions in their particular topic
6 areas should, in fact, reflect this general
7 consideration around phasing of the project, and
8 plans associated with that.

9 HEARING OFFICER VALKOSKY: Thank you.
10 Next on I believe it's page 69, dealing with the
11 closure provisions. You indicate a general
12 agreement with condition of certification GEN9.

13 My question is to my recollection
14 staff's compliance plan, specifically exhibit 115,
15 at page 5-15, and at least my copy of exhibit 124
16 at page 14 mentions two other areas, namely waste
17 management and hazardous materials, which also
18 will contain conditions concerning facility
19 closure.

20 Are you familiar with that?

21 MR. TRUMP: I would -- my understanding
22 is that the waste management section will include
23 various provisions around closure, if you mean
24 decommissioning and demolition of the facility.

25 HEARING OFFICER VALKOSKY: Yes, I do.

1 So, am I to take your general agreement with the
2 staff condition at this time to include the
3 conditions in the technical areas of hazardous
4 materials management and waste management?

5 MR. TRUMP: I'm sorry, I'm not sure if I
6 understand your question.

7 HEARING OFFICER VALKOSKY: You've
8 indicated general acquiescence to staff's
9 conditions dealing with closure.

10 MR. TRUMP: Um-hum.

11 HEARING OFFICER VALKOSKY: Staff
12 indicates that they have at least two more topic
13 areas in which these conditions will apply. Are
14 you intending at this point to indicate agreement
15 with those conditions, or is that something that
16 you're going to reserve until we deal with those
17 topic areas?

18 MR. TRUMP: As it relates to the phasing
19 issue number one that I --

20 HEARING OFFICER VALKOSKY: As it relates
21 to all aspects of facility closure.

22 MR. TRUMP: There is nothing that we
23 have, or found contradictory or in conflict with
24 the proposed conditions under waste management and
25 the facility closure plan, as the staff has

1 written it in the FSA.

2 HEARING OFFICER VALKOSKY: Okay.

3 MR. ELLISON: Just to clarify, I think,
4 if I understood your question, we are addressing
5 the waste conditions under waste.

6 HEARING OFFICER VALKOSKY: Right, and
7 the hazmat conditions under hazmat?

8 MR. ELLISON: That's right.

9 HEARING OFFICER VALKOSKY: Is that also
10 correct?

11 MR. TRUMP: That's correct.

12 HEARING OFFICER VALKOSKY: Fine. Thank
13 you. And I'll note for the record I'll defer to
14 the City the question on exhibit 119.

15 PRESIDING MEMBER MOORE: Thank you.
16 Under cross-examination, staff?

17 MS. HOLMES: No questions.

18 PRESIDING MEMBER MOORE: Thank you. For
19 the City, cross-examination.

20 MR. SCHULTZ: No questions.

21 PRESIDING MEMBER MOORE: Thank you. And
22 for the intervenors, CAPE, cross?

23 MS. CHURNEY: Yes.

24 These questions go to the topic of
25 compliance monitoring.

1 CROSS-EXAMINATION

2 BY MS. CHURNEY:

3 Q First of all, approximately how many
4 resident complaints has Duke received since it
5 acquired the existing plant regarding its
6 operations?

7 A I'm not in a position to know that fact.

8 Q Are you aware of any compliance relating
9 to rust-like particles?

10 A I am aware that there have been some
11 complaints regarding the rust particles.

12 Q Who has knowledge of the complaints that
13 have been lodged?

14 A I believe the most knowledgeable person
15 to address those questions for Duke Energy would
16 be Steve Goshky, the Plant Manager, who is here
17 tonight.

18 Q Do you have any knowledge as to whether
19 any of the complaints that have been lodged have
20 been lost, requiring resubmission?

21 A Again, I'm not in a position to answer
22 your question. I think Mr. Goshky would be in a
23 better position to answer them.

24 Q Thank you.

25 MS. CHURNEY: I guess my only other

1 question would be whether Mr. Goshky would be
2 willing to testify this evening about those
3 topics.

4 PRESIDING MEMBER MOORE: Mr. Ellison,
5 are you prepared to sponsor this witness?

6 MR. ELLISON: Well, we had not planned
7 to sponsor Mr. Goshky, but before we get to that
8 let me ask an even more basic question with
9 respect to CAPE.

10 I understand that on this issue that
11 CAPE, in addition to offering the testimony of Mr.
12 Stacy, I believe, has also proposed a couple of
13 specific changes to certification conditions.

14 And although we have certainly some
15 disagreements with the supporting testimony, Duke
16 is not particularly in disagreement with the
17 proposed changes to certification that I believe,
18 subject to confirmation from CAPE, is what this is
19 all about, and that they are seeking.

20 So we might be able to save ourselves a
21 lot of time if CAPE can confirm that that is what
22 they are seeking, that they're proposed conditions
23 of certification. And we can talk about what they
24 are.

25 And if that's the case, then we can

1 simply stipulate that we can agree to those
2 proposed changes, at least in concept, and move
3 on.

4 Now, if they want to go into the history
5 of complaints for some other purpose, then we're
6 going to have to take up the hearing time to do
7 that.

8 PRESIDING MEMBER MOORE: Well, Mr.
9 Ellison, I think I'd actually rather wait till we
10 get to CAPE's presentation on that to find that
11 out.

12 Let me go back to the other question and
13 just say at this point are you willing to sponsor
14 the other witness to answer those questions?

15 MR. ELLISON: If the Committee so
16 desires, we can do that. I think that it's
17 important to say, however, that I am concerned
18 about the cross-examination going beyond the scope
19 of the direct testimony.

20 The direct testimony that's being cross-
21 examined here is the prefiled testimony of Mr.
22 Trump that we've been discussing. For the limited
23 purpose of questions relevant to that testimony
24 that Mr. Trump cannot answer, we're prepared to
25 put Mr. Goshky on the stand. I'm sure he's

1 thrilled to hear that.

2 (Laughter.)

3 PRESIDING MEMBER MOORE: Yeah, Mr.

4 Ellison, I'm going to ask you to leave this to
5 your discretion. You've sponsored a witness who
6 has testified. I'm not going to force you to
7 bring that other witness up. If you believe it
8 will add some clarity, then do so. If you don't
9 wish to, then the matter is going to rest.

10 MR. ELLISON: Well, as I say, I mean if
11 it's directly related to the prefiled testimony
12 and it's not beyond the scope of that testimony,
13 Mr. Goshky --

14 PRESIDING MEMBER MOORE: Well, actually,
15 you've heard our --

16 MR. ELLISON: -- is available.

17 PRESIDING MEMBER MOORE: -- our set of
18 questions. And I'm prepared to ask Mr. Goshky to
19 answer those questions if you want to do that.
20 I'm happy to do that. We won't subject him to
21 cross-examination. We'll have him answer those
22 questions.

23 MR. ELLISON: That's fine.

24 PRESIDING MEMBER MOORE: All right,
25 let's ask Mr. Goshky to come up, then, and answer

1 those questions as they were stated. And he's
2 going to have to come up and get sworn in.
3 Whereupon,

4 STEVE GOSHKY
5 was called as a witness herein, and after first
6 having been duly sworn, was examined and testified
7 as follows:

8 PRESIDING MEMBER MOORE: Thank you. Did
9 you hear the questions, Mr. Goshky?

10 MR. GOSHKY: Yes, but I'd like to hear
11 them repeated if I could, please.

12 PRESIDING MEMBER MOORE: All right, as I
13 recall there were three questions.

14 CROSS-EXAMINATION

15 BY MS. CHURNEY:

16 Q Mr. Goshky, approximately how many
17 resident complaints has Duke received since it
18 acquired the existing plant regarding its
19 operations?

20 A I would estimate 20.

21 Q Were all these complaints responded to
22 promptly by Duke?

23 A I believe yes.

24 Q How many claims for damages for rust-
25 like particles has Duke received?

1 A Probably about 70 percent of those that
2 we have gotten.

3 PRESIDING MEMBER MOORE: So 70 percent
4 of the 20?

5 MR. GOSHKY: Yes.

6 BY MS. CHURNEY:

7 Q Were any of those claims ever lost
8 requiring resubmission by the complainant?

9 MR. ELLISON: Excuse me, let me ask for
10 a clarification. Lost by the complainant? Lost
11 by Duke?

12 MS. CHURNEY: I'm sorry.

13 BY MS. CHURNEY:

14 Q Lost by Duke?

15 A It's our practice when we get a rust-
16 like particulate complaint to notify the Air
17 Pollution Control District of those complaints.
18 And we both insure that we keep track of them and
19 resolve them in an appropriate manner in each
20 case. You know, every case is different.

21 PRESIDING MEMBER MOORE: So, Mr. Goshky,
22 as far as you know you haven't lost any?

23 MR. GOSHKY: I haven't lost any.

24 PRESIDING MEMBER MOORE: Thank you, Mr.
25 Goshky. All right. Let me then go -- I'm sorry,

1 Mr. Valkosky has a question.

2 PRESIDING MEMBER MOORE: You're done.

3 HEARING OFFICER VALKOSKY: Concerning
4 compliance, are you familiar with exhibit 119,
5 which we've marked, the testimony of Robert W.
6 Schultz, on behalf of the City of Morro Bay?

7 MR. TRUMP: I am, but I'd like to pull
8 it out here.

9 HEARING OFFICER VALKOSKY: Certainly.

10 MR. TRUMP: I don't have numbers.

11 HEARING OFFICER VALKOSKY: And when
12 you've found it, go to page 4, under the heading
13 recommendation.

14 MR. TRUMP: Which is at the bottom of my
15 page 4.

16 HEARING OFFICER VALKOSKY: Right. And
17 do you have a position as to the imposition of the
18 suggested language?

19 MR. TRUMP: The language that reads: As
20 a condition of certification the project owner --

21 HEARING OFFICER VALKOSKY: Correct.

22 MR. TRUMP: -- which appears on my page
23 5.

24 HEARING OFFICER VALKOSKY: Okay, well,
25 the language is: As a condition of certification

1 the project owner shall comply with all of the
2 provisions of the agreement to lease between the
3 City of Morro Bay and Duke Energy. Morro Bay LLC,
4 paren, attachment, blank, to this decision, close
5 paren, period.

6 MR. TRUMP: I do object at this time to
7 that condition of certification. The intent of
8 the parties is to attempt to enter into a
9 stipulation where certain provisions of the
10 agreement to lease will and can be part of the
11 Energy Commission license. And we're fully in
12 support of that.

13 Our position is that there are certain
14 provisions of the agreement to lease which are not
15 and should not be jurisdictional to the Energy
16 Commission license.

17 So, there are certain provisions of the
18 agreement to lease where we believe that this
19 should be, in fact, applicable, or would be
20 welcomed by the applicant.

21 There are other provisions of the
22 agreement to lease which we believe, both from
23 Duke Energy's perspective, as well as in the self
24 interest of the City, which we don't believe would
25 be appropriate to be jurisdictional to the Energy

1 Commission licensing.

2 HEARING OFFICER VALKOSKY: Thank you.

3 MR. ELLISON: And, Mr. Valkosky, if I
4 could just add to that, we are in active
5 discussions with the City on this issue. And for
6 that reason we would prefer, subject to the City's
7 concurrence, to the extent -- if it turns out that
8 this issue does need to be resolved through
9 testimony in this proceeding, we would prefer that
10 it be deferred to give the parties additional time
11 to see if they can't reach an agreement on the
12 issue rather than dealing with it tonight.

13 HEARING OFFICER VALKOSKY: And that
14 deferral would be in the scope of, I assume, the
15 land use?

16 MR. ELLISON: That's correct. I mean
17 these issues primarily concern -- well, they touch
18 on a variety of issues, the provisions that are
19 potential candidates for incorporation into the
20 license, touch on a number of issues, most of
21 which have not yet been heard. And therefore I
22 don't think we're taking anything out of order
23 here.

24 As it happens, this proposal from Mr.
25 Schultz, or from the City, I should say, came up

1 in the context of compliance. But I think in the
2 interests of allowing the parties to discuss it
3 further and given that we do have many more
4 hearings still to go, that we would prefer -- I
5 mean we could get into it now, if you wish. But I
6 think it's the City's desire as well as --

7 HEARING OFFICER VALKOSKY: No, I don't.

8 MR. ELLISON: -- ours to continue to
9 discuss this issue.

10 HEARING OFFICER VALKOSKY: I just want
11 to telegraph the Committee acknowledges this as an
12 issue, and it's not something that we need to
13 dispose of today, if, in fact, it will be dealt
14 with in depth in future areas. That's fine, thank
15 you.

16 MR. ELIE: That's acceptable to the City
17 as long as we have that understanding that there's
18 a reservation to revisit it if we can't come to a
19 stipulation.

20 HEARING OFFICER VALKOSKY: In other
21 areas.

22 MR. ELIE: Right.

23 HEARING OFFICER VALKOSKY: Right. No,
24 that's fine.

25 PRESIDING MEMBER MOORE: I don't know

1 that we have any choice in that case.

2 Staff, cross-examine?

3 MS. HOLMES: Of whom?

4 PRESIDING MEMBER MOORE: I'm sorry,

5 didn't we have -- it was direct, excuse me.

6 (Laughter.)

7 PRESIDING MEMBER MOORE: Without my

8 lawyer, I'm -- all right. Okay, anything further,

9 Mr. Ellison?

10 MR. ELLISON: No.

11 PRESIDING MEMBER MOORE: Thank you.

12 Let's go to staff.

13 MS. HOLMES: Thank you. Staff's witness

14 for general conditions including compliance is

15 Chris Huntley. People have not had a chance to

16 review, I know, his qualifications. He was

17 substituted at the last moment because the

18 compliance project manager who's been assigned to

19 this case was called for jury duty and could not

20 get excused.

21 As a result, after he's sworn, I will go

22 through his qualifications and background orally.

23 PRESIDING MEMBER MOORE: Thank you.

24 Swear the witness, please.

25 //

1 Whereupon,

2 CHRIS HUNTLEY

3 was called as a witness herein, and after first
4 having been duly sworn, was examined and testified
5 as follows:

6 MR. ELLISON: Let me say in the
7 interests of time we're prepared to stipulate that
8 he's a qualified witness, if the other parties
9 are, as well.

10 MR. SCHULTZ: So stipulated.

11 MS. CHURNEY: We'll stipulate, as well.

12 MS. HOLMES: Well, that makes my job a
13 lot easier.

14 PRESIDING MEMBER MOORE: Right.

15 DIRECT EXAMINATION

16 BY MS. HOLMES:

17 Q Could you state your name for the
18 record.

19 A My name is Chris Huntley,
20 H-u-n-t-l-e-y.

21 Q And have you read the portion of the
22 testimony in exhibit 115 entitled general
23 conditions including compliance monitoring and
24 closure plan that was prepared by Connie Bruins?

25 A Yes, I have.

1 Q And have you also read the compliance
2 portion of the testimony that's been identified as
3 exhibit 124, errata on compliance issues?

4 A Yes, I have.

5 Q Do you adopt that testimony as your own?

6 A I do.

7 Q Are the facts contained in that
8 testimony true and correct?

9 A Yes, ma'am.

10 Q And do the opinions contained in that
11 testimony represent your best professional
12 judgment?

13 A Yes, they do.

14 Q And do you have any changes or
15 corrections at this time?

16 A No, I do not.

17 MS. HOLMES: I'd like to ask one
18 question on direct before we make the witness
19 available for cross.

20 BY MS. HOLMES:

21 Q Earlier this evening, Mr. Huntley, there
22 was a discussion about the agreement to lease
23 between the City and Duke. Do you recollect that
24 discussion?

25 A Yes, I do.

1 Q And does the Commission Staff have a
2 position about the appropriateness of including
3 conditions in the general compliance section that
4 are unrelated to environmental impacts or
5 compliance with LORS?

6 A Yes, we do.

7 Q Could you please state what that is?

8 A Yes, ma'am. At this point in time
9 compliance does not feel it's appropriate to
10 include the agreement to lease in the standard
11 conditions of certification.

12 It's a commercial decision, an agreement
13 between two parties, and we would prefer to
14 maintain documents directly linked to
15 environmental impacts.

16 Q Thank you.

17 MS. HOLMES: The witness is available
18 for cross-examination.

19 PRESIDING MEMBER MOORE: Thank you, Ms.
20 Holmes. All right, to the applicant, questions on
21 cross-examination?

22 CROSS-EXAMINATION

23 BY MR. ELLISON:

24 Q You heard the testimony of Mr. Trump a
25 moment ago about the issues identified as issue

1 number one and number six in our testimony on
2 compliance monitoring?

3 A Yes, I did.

4 Q Do you have any concerns with the
5 proposals set forth by the applicant in those two
6 issues?

7 A Yes, I do.

8 Q Would you describe --

9 A Yes, sir.

10 Q -- what the staff's response is on those
11 issues, please?

12 A Issue number one would best be dealt
13 with directly with technical staff, since it's
14 inappropriate at this time to make a blanket
15 judgment for all conditions of certification.

16 Concerning the CBO authority, the Energy
17 Commission Staff would just like to point out that
18 the Energy Commission acts as the CBO, and will
19 delegate the CBO to whoever it feels is
20 appropriate. We will certainly consult with Duke;
21 we'll certainly take comments from the City. But
22 the final determination of who the CBO will or
23 will not be will be determined by staff.

24 Q With respect to the CBO issue, will you
25 give some consideration, however, to the, in

1 deciding whether to delegate or not, to the
2 interests of the local government and the
3 applicant?

4 A Certainly.

5 Q And with respect to the first issue of
6 this question about general conditions, I
7 understood your testimony to be that you would
8 prefer to see this dealt with topic by topic
9 rather than in one single place under compliance,
10 is that correct?

11 A Yes, it is.

12 Q But on a topic-by-topic basis you would
13 defer to the individual witnesses on those topics?

14 A I think that would be appropriate.

15 MR. ELLISON: Okay. That's all I have,
16 thank you.

17 PRESIDING MEMBER MOORE: Mr. Valkosky.

18 HEARING OFFICER VALKOSKY: Okay, between
19 Mr. Ellison and Mr. Huntley, it was my
20 understanding based on a couple of questions I
21 asked that it was applicant's intention to deal
22 with these on a topic-by-topic basis. Is that not
23 correct? The changes to the individual conditions
24 of certification.

25 MR. ELLISON: That is correct.

1 HEARING OFFICER VALKOSKY: Okay, now
2 that is your -- staff's understanding, too?

3 MR. HUNTLEY: Yes, it is.

4 HEARING OFFICER VALKOSKY: Okay, fine.
5 Last question I have on this. In exhibit --
6 actually this may be more appropriate for your
7 counsel.

8 Exhibit 115, page 5-13, numbered
9 paragraph two, the way I read that it's that the
10 Executive Director will take an action, including
11 the imposition of a fine. Am I incorrect in
12 interpreting the statute that only the Commission
13 can impose a fine, not the Executive Director?

14 MS. HOLMES: That's my understanding.

15 HEARING OFFICER VALKOSKY: So that is an
16 incorrect statement then, legally incorrect?

17 MS. HOLMES: Yes, it is.

18 HEARING OFFICER VALKOSKY: Thank you.

19 PRESIDING MEMBER MOORE: Funny, we were
20 just about to go through that exact same issue on
21 Wednesday on the data collection. So, how timely.

22 All right. City?

23 MR. SCHULTZ: Yes, just two quick
24 questions.

25 //

1 CROSS-EXAMINATION

2 BY MR. SCHULTZ:

3 Q Have you read the agreement to lease?

4 A Yes, I have.

5 Q When was that that you read that
6 agreement?

7 A Two days ago.

8 Q And you read the entire agreement?

9 A Twice.

10 Q And it's your opinion then that all the
11 terms and conditions there do not relate to
12 mitigation?

13 MS. HOLMES: I'm going to object to that
14 question on the grounds that it misstates what the
15 witness' previous testimony. He simply said it
16 was --

17 PRESIDING MEMBER MOORE: I'm going to
18 sustain that.

19 MR. SCHULTZ: Point of order, then.
20 Just for clarification sake, then we are going to
21 be addressing in the agreement to lease in each
22 separate section and how that should fit in within
23 the agreement to lease and whether that should be
24 a condition or not specifically with the general
25 conditions? Is that where we're heading with

1 this?

2 PRESIDING MEMBER MOORE: That is where
3 we're heading.

4 MR. SCHULTZ: Okay, thank you. No
5 further questions.

6 PRESIDING MEMBER MOORE: Thank you.
7 Intervenors, CAPE?

8 MS. CHURNEY: Yes.

9 CROSS-EXAMINATION

10 BY MS. CHURNEY:

11 Q The FSA mentions complaints in a number
12 of places in the general conditions and compliance
13 section, and I'd just like to clarify. Does this
14 include all residents' complaints?

15 A There's a number of mechanisms, yes.
16 Any resident, agency, even a member of the Energy
17 Commission can file a complaint.

18 If a complaint is filed the applicant
19 has a responsibility to notify the CPM within ten
20 days of that complaint, and to include that
21 complaint in its monthly compliance reports.

22 Q Okay. And turning to the FSA, page 5-9,
23 which describes a notice to be provided by Duke
24 before beginning construction, could you tell me
25 why is the required notice limited to those living

1 only within one mile of the project?

2 A I don't have an adequate reason why one
3 mile would be suitable. Typically it's related to
4 noise and construction disturbance. Folks who are
5 driving within those areas or live within an area
6 where noise may impact their way of life.

7 Q If Duke were willing to stipulate to a
8 broader notice, would staff have a problem with
9 that?

10 A Staff would like to keep the system
11 currently in place as-is.

12 Q Meaning that even though Duke were to
13 agree to a broader notice, staff would object to
14 that?

15 A Staff would not necessarily object if
16 Duke chose to increase the distribution of its
17 noise notification letters. But by and large the
18 system has been working effectively and we don't
19 feel there needs to be substantial change in that
20 protocol.

21 Q If evidence were to be provided to you
22 that at least in certain circumstances the system
23 has not worked properly, would that affect your
24 decision on including further conditions?

25 MS. HOLMES: I'm going to object to that

1 question because the system that the witness is
2 testifying to is not in place here.

3 PRESIDING MEMBER MOORE: Sustained.

4 BY MS. CHURNEY:

5 Q Does staff consider the track record of
6 the applicant in considering the level of
7 compliance monitoring required?

8 A Staff monitors all projects regardless
9 of the track record of the applicant.

10 Q And are you aware of the history of Duke
11 as to any nonresponsiveness to complaints or lost
12 complaints in the past regarding the existing
13 plant?

14 A Yes, ma'am, I believe the documents
15 supplied by CAPE was provided to me.

16 Q If a specific project lifetime, for
17 example 30 years, is being used to evaluate the
18 significant impacts of the new plant, has staff
19 considered a general condition requiring
20 recertification with a complete CEQA analysis
21 before the plant can continue to operate beyond
22 that 30 years?

23 A I'm not aware if that system is in
24 place.

25 MS. CHURNEY: I have no further

1 questions.

2 MR. ELIE: Mr. Commissioner, I'm sorry,
3 point of order.

4 PRESIDING MEMBER MOORE: Thank you. I'm
5 sorry, who's --

6 MR. ELIE: I'm sorry, over here. In
7 light of the sort of changed way we've been going,
8 we did actually have one more short series of
9 questions for the witness if you would allow us to
10 reopen our cross?

11 PRESIDING MEMBER MOORE: I'll allow --

12 MR. ELIE: Because it's related to the
13 agreement to lease. Would you allow that?

14 PRESIDING MEMBER MOORE: Yes.

15 MR. ELIE: Thank you.

16 PRESIDING MEMBER MOORE: Go ahead.

17 CROSS-EXAMINATION - Resumed

18 BY MR. ELIE:

19 Q Sir, do you have a copy of the agreement
20 to lease there?

21 A Yes, I do.

22 Q Would you turn to page 27 and 28,
23 please, paragraph 9.3 entitled, abandonment and
24 facility closure. We're dealing with exhibit 95
25 here.

1 MS. HOLMES: I'm sorry, could you please
2 restate the page number again?

3 MR. ELIE: 27, paragraph 9.3.

4 MS. HOLMES: Thank you. You know it
5 well.

6 MR. ELIE: I have it in front of me.

7 MR. HUNTLEY: Yes, I can see that.

8 BY MR. ELIE:

9 Q Would staff object to including the
10 substance of this paragraph as a condition under
11 facility closure?

12 A I believe that technical staff would
13 probably be best in answering that question.

14 Q And who would that be?

15 A Probably engineering. Although if I was
16 to make a comment, it is inconsistent with our
17 facility closure protocols.

18 Q Are you sure that's inconsistent or just
19 different?

20 A Our site restoration plan requires them
21 to replace or bring the site back to its previous
22 condition. We do not necessarily have an option
23 in there to sell the facility site back to the
24 City for one dollar.

25 MR. ELIE: Nothing further. Thank you.

1 PRESIDING MEMBER MOORE: Thank you. Mr.
2 Valkosky has a question.

3 HEARING OFFICER VALKOSKY: When you
4 spoke of direct, or you spoke of notice to people
5 within a mile of the plant site I assume you were
6 referring to direct mail notice, is that correct?

7 MR. HUNTLEY: Yes, sir.

8 HEARING OFFICER VALKOSKY: Would there
9 be any objection to providing published notice in
10 a newspaper or other item of general circulation?

11 MR. HUNTLEY: I do not believe so.

12 HEARING OFFICER VALKOSKY: Thank you.

13 PRESIDING MEMBER MOORE: Thank you very
14 much. Redirect?

15 MS. HOLMES: No questions.

16 PRESIDING MEMBER MOORE: No redirect.
17 The witness is excused. Thank you, Mr. Huntley.

18 MR. HUNTLEY: Thank you.

19 MS. HOLMES: I'd like to move that
20 exhibit 115 and 124 as they relate to compliance
21 and closure be entered into the record.

22 PRESIDING MEMBER MOORE: Any objection
23 from any party? Hearing none, so moved.

24 And we'll go to the City who is
25 sponsoring a witness.

1 MR. ELIE: Mr. Schultz.

2 PRESIDING MEMBER MOORE: Counsel, thank
3 you. Your witness needs to be sworn in. Thank
4 you.

5 Whereupon,

6 ROBERT SCHULTZ
7 was called as a witness herein, and after first
8 having been duly sworn, was examined and testified
9 as follows:

10 DIRECT EXAMINATION

11 BY MR. ELIE:

12 Q Please state your name for the record
13 and spell your last name.

14 A Robert Schultz, S-c-h-u-l-t-z.

15 Q What's your job in connection with these
16 proceedings?

17 A I currently serve as the City Attorney
18 for Morro Bay and I've been in that position for
19 just over four years.

20 Q Have you been the lead attorney for the
21 City in connection with negotiations with Duke
22 concerning various agreements?

23 A Yes, for the past two years I've been
24 extensively involved in the negotiations through
25 many many meetings with counsel for Duke, first

1 coming to reach an agreement with an MOU, a
2 memorandum of understanding, and then recently
3 with the agreement to lease.

4 Q And you're also involved in the
5 negotiations on the outfall lease?

6 A That's correct. And that, at this point
7 in time is crossing t's and dotting i's, and we
8 hope to reach that agreement in the near future.

9 Q What is your understanding of the City's
10 position concerning present status of the ATL,
11 agreement to lease, which is exhibit 95, and also
12 attached is your testimony.

13 A The ATL has been approved in concept by
14 both Duke and the City of Morro Bay. It has not
15 been formally approved because we are waiting for
16 the entire final staff assessment to be completed
17 so that we can use that to find our CEQA findings,
18 and then approve it as a Council document.

19 Q From the City's perspective what are the
20 key or primary components of the agreement to
21 lease?

22 A Due to the late hour and the point of
23 order that was raised earlier, I'm not going to go
24 too much into detail, but they are listed in my
25 testimony on page 2, 3, and 4 of all the key items

1 there that we believe are not only just commercial
2 transactions, but are also key mitigation factors.

3 I agree with Mr. Ellison's comment, they
4 were negotiated because there was a difference of
5 opinion as to whether those were mitigations or
6 were not mitigations, but it was a way to
7 compromise on those issues and reach a conclusion
8 with Duke on how they would be handled.

9 So they're very important to the City.
10 They're the same basic testimony of Mr. Trump from
11 page 37 to 40 of his testimony. And so I'm not
12 going to go through every single one of them, but
13 they are very key to the City. These are all
14 substantial issues, not only from fire and police,
15 mitigation or impacts that we felt, but
16 socioeconomics; it involves dedications of lands.
17 And it's very important to the City, very
18 important document that we've negotiated over the
19 past two years.

20 Q Is exhibit 119 entitled testimony of
21 Robert Schultz something you prepared?

22 A Yes, it is.

23 Q Do you have any changes, corrections or
24 additions to that testimony?

25 A No, I do not.

1 Q Is it true and correct to the best of
2 your knowledge and belief?

3 A Yes, it is.

4 MR. ELIE: I would offer exhibit 119
5 into evidence, with the exhibit.

6 PRESIDING MEMBER MOORE: All right. A
7 little bit of change in procedure. Any objections
8 to offering that?

9 MS. HOLMES: No objections from staff.

10 MR. ELLISON: No objection.

11 PRESIDING MEMBER MOORE: All right.
12 Intervenors?

13 MS. CHURNEY: No objections.

14 PRESIDING MEMBER MOORE: So entered.
15 Counsel.

16 MR. ELIE: The witness is available.

17 PRESIDING MEMBER MOORE: Thank you. The
18 applicant, Mr. Ellison, do you have questions,
19 cross-examination?

20 MR. ELLISON: No, no questions.

21 PRESIDING MEMBER MOORE: Thank you. And
22 for staff?

23 MS. HOLMES: No questions.

24 PRESIDING MEMBER MOORE: Intervenor
25 CAPE?

1 MS. CHURNEY: No questions.

2 PRESIDING MEMBER MOORE: Thank you very
3 much. And I assume no redirect -- just teasing.
4 Your witness is excused, thank you very much.

5 Remind myself, no levity at this time of
6 night.

7 (Laughter.)

8 PRESIDING MEMBER MOORE: All right,
9 unless it's at my own expense. Thank you. And to
10 the intervenors, CAPE, you are sponsoring two
11 witnesses.

12 MS. CHURNEY: Right, as we explained
13 before, Mr. McCurdy really doesn't belong in this
14 grouping, but we'll call him anyway just briefly.

15 I'd like to call Mr. Stacy first,
16 though.

17 PRESIDING MEMBER MOORE: All right. Mr.
18 Stacy, come up and will necessarily need to be
19 sworn.
20 Whereupon,

21 BRIAN STACY
22 was called as a witness herein, and after first
23 having been duly sworn, was examined and testified
24 as follows:

25 PRESIDING MEMBER MOORE: Thank you.

1 Counsel.

2 DIRECT EXAMINATION

3 BY MS. CHURNEY:

4 Q Mr. Stacy, you've offered a declaration
5 in this matter, is that correct?

6 A Yes, it is.

7 Q And have you any additions or
8 corrections to make to the written testimony that
9 you've provided?

10 PRESIDING MEMBER MOORE: Counsel, I
11 think you need to get to the background of your
12 witness first.

13 BY MS. CHURNEY:

14 Q Could you briefly describe your
15 background for the Commission?

16 A My background regarding Duke or my
17 overall background?

18 Q Generally your background.

19 A Okay. I'm a resident of Morro Bay. I
20 was born and raised here. I'm a commercial
21 fisherman, and I live at the end of the plumes.

22 Q And do you have any additions or
23 corrections to make to the written testimony that
24 you've provided?

25 A Only to say that I'm a little fuzzy on

1 the dates, but the content is correct.

2 Q You've indicated in paragraph 14 that
3 you had scheduled after you prepared this
4 declaration a meeting with a representative of
5 Duke, is that correct?

6 A Yes, it is.

7 Q Did that meeting occur?

8 A Yes, it did.

9 Q Was your complaint resolved at that
10 time?

11 A Not to my satisfaction, no.

12 Q And that meeting occurred on December
13 13th, is that correct?

14 A Yes, it is.

15 Q Has Duke, in fact, paid your claim?

16 A No, they haven't. They've offered an
17 additional wax job.

18 Q Do you have any other additions or
19 corrections to make to this declaration?

20 A No, ma'am.

21 Q Is everything stated in this declaration
22 true and correct to the best of your knowledge?

23 A Yes, it is.

24 Q And are the opinions and the facts
25 stated your own?

1 A Yes, they are.

2 MS. CHURNEY: I would offer this into
3 evidence as exhibit 121.

4 PRESIDING MEMBER MOORE: Are there
5 objections to offering this into evidence? Any
6 objections? Counsel? Staff?

7 MS. HOLMES: None.

8 PRESIDING MEMBER MOORE: City? No. So
9 entered. Is your witness available?

10 MS. CHURNEY: Yes.

11 PRESIDING MEMBER MOORE: Thank you. To
12 the applicant, cross-examination.

13 MR. ELLISON: Let me, before I begin my
14 cross-examination, ask counsel for CAPE the
15 question that I posed earlier and that was asked
16 to be deferred until now, which is, is the purpose
17 of this testimony to support the proposed
18 compliance conditions that CAPE included in its
19 supplemental prehearing conference statement, I
20 think was the way it was described?

21 MS. CHURNEY: That's one purpose. We
22 also believe, though, that staff needs this as
23 background in making their decisions with respect
24 to compliance conditions. To the extent that
25 staff has indicated here in testimony this evening

1 that they have considered it, the Coastal Alliance
2 would be satisfied with that.

3 MR. ELLISON: And just so that we have a
4 clear record, can you briefly describe what the
5 proposed -- and I'll address this to either
6 counsel or the witness, and you can decide,
7 counsel, how you want this responded to -- what
8 the proposed compliance certification changes
9 would be?

10 MS. CHURNEY: There are three, and that
11 is, first of all, that the required notice be
12 mailed to all residents of Morro Bay, not just
13 those living within one mile of the project, on
14 the basis that this is a small community, and all
15 residents will have occasion to be within one mile
16 of the plant at one time or another during the
17 course of most ordinary days.

18 Secondly, with respect to the filing of
19 complaints that Duke be required to respond to the
20 complainant within 24 hours, or a reasonable
21 amount of time. And I believe Duke has suggested
22 48 hours, and that would be agreeable.

23 MR. ELLISON: Actually to be clear I
24 think what we've proposed is 48 business hours,
25 just in case that difference matters to you.

1 MS. CHURNEY: That is a bit long. I
2 think 48 hours, two days, would be more
3 reasonable.

4 MR. ELLISON: Well, the concern that we
5 have is if somebody leaves a message on the -- one
6 way to complain is to leave a voicemail message --
7 and if it's left over the weekend then it will be
8 not picked up until Monday morning. And if they
9 happen to leave it at, you know, 5:01 on Friday,
10 then the 48 hours would be gone --

11 MS. CHURNEY: I understand that.

12 MR. ELLISON: -- and that's the concern.

13 MS. CHURNEY: Okay. And I do understand
14 that.

15 MR. ELLISON: So with that stipulation
16 that it's 48 business hours, would that be
17 acceptable?

18 MS. CHURNEY: That's fine. And finally
19 that Duke be required to confirm with the
20 complainant that the complaint has been received.

21 MR. ELLISON: How is that different than
22 the second?

23 MS. CHURNEY: I'm sorry, that Duke be
24 required to forward a copy of the complaint form
25 to the complainant after it has been prepared,

1 just to confirm that the complainant has filed a
2 valid complaint and that it hasn't been lost.

3 MR. ELLISON: With the understanding
4 that valid complaint doesn't necessarily mean that
5 you agree that the complaint is legitimate.

6 I think what you're getting at here, and
7 correct me if I'm wrong, is that the complaint
8 report that goes to the compliance project manager
9 also be provided to the complainant, is that --

10 MS. CHURNEY: That's correct.

11 MR. ELLISON: Okay. With respect to the
12 first -- bear with me here, this is actually
13 saving us a lot of time -- with respect to the
14 first proposed condition, Mr. Valkosky, a few
15 minutes ago, suggested that notice could be
16 provided beyond one mile through some other means
17 than a mailing.

18 As long as the notice is reasonably
19 effective does CAPE have a concern with that?

20 MS. CHURNEY: Well, the preference, I
21 think, would be to provide it in writing in the
22 mail because not all residents read the newspaper.
23 The newspaper is only a weekly here locally.

24 So there wouldn't be the assurances that
25 the notice would be received by all those

1 affected.

2 MR. ELLISON: Okay, well then I think we
3 do have a very small disagreement about that
4 issue, about the form of the notice. But let me
5 just say that we do not disagree about providing
6 the phone number, that's basically what we're
7 talking about, is the way, notice of how to make a
8 complaint through some reasonable means beyond a
9 mile within the city limits of Morro Bay to
10 everyone within the city limits of Morro Bay.

11 Having said that, and with that, I
12 think, clarified record as to what the issues are
13 here, I'm going to state for the record that Duke
14 has a number of disagreements with Mr. Stacy's
15 declaration and the particular complaint that he
16 describes here.

17 But in the interests of time and because
18 we think that particular incident is not
19 particularly probative on the larger issue, we are
20 not going to cross-examine about that issue.

21 So, we're done, thank you.

22 PRESIDING MEMBER MOORE: Ms. Holmes?

23 MS. HOLMES: I have no questions for
24 this witness.

25 PRESIDING MEMBER MOORE: Thank you. For

1 the City?

2 MR. SCHULTZ: No questions.

3 PRESIDING MEMBER MOORE: Mr. Valkosky
4 has a question.

5 HEARING OFFICER VALKOSKY: Okay, back to
6 the -- and this will involve mostly CAPE and the
7 applicant.

8 On the three changes that you have just
9 discussed, the ones that Duke apparently agrees
10 with, are you suggesting specific changes to the
11 language of the compliance plan as contained in
12 the FSA, or will this come in at some different
13 point?

14 MR. ELLISON: Frankly, Mr. Valkosky, I
15 have not thought about that issue. And I'm not
16 sure what CAPE is asking for.

17 So let me just state for the record that
18 conceptually we are in agreement with the
19 exception of the form of the notice beyond one
20 mile with what CAPE is seeking here. And whether
21 that's best done through the means that you just
22 described or some other means is something that I
23 would --

24 HEARING OFFICER VALKOSKY: Right, and --

25 MR. ELLISON: -- prefer to reserve --

1 HEARING OFFICER VALKOSKY: -- I guess,
2 well, my question is that compliance typically
3 deals with a general program.

4 The three conceptual points that you're
5 in agreement with, to my understanding, focus more
6 on the noise topic. I don't know if i'm correct
7 or not in that understanding.

8 If that understanding is correct I would
9 suggest that the parties achieve agreement, if
10 possible, and deal with it in noise. If not, then
11 it should go into the general compliance plan.

12 MS. CHURNEY: It isn't just noise.

13 HEARING OFFICER VALKOSKY: It isn't just
14 noise? Okay, thank you then. So, again, the same
15 question is are you proposing specific language
16 changes to the compliance plan as contained in the
17 FSA?

18 MS. CHURNEY: We're agreeable that Duke
19 is on record to address these issues. We would
20 prefer that it be a part of the general
21 conditions, but --

22 HEARING OFFICER VALKOSKY: But you are
23 not proposing specific language changes at this
24 time?

25 MS. CHURNEY: No.

1 HEARING OFFICER VALKOSKY: Thank you.

2 PRESIDING MEMBER MOORE: Thank you.

3 This witness is excused, and we'll go back -- CAPE
4 you have a second witness?

5 MS. CHURNEY: Yes.

6 PRESIDING MEMBER MOORE: Oh, I'm sorry,
7 excuse me. Was your question for the witness?

8 MR. O'BRIEN: No, not for the witness.

9 PRESIDING MEMBER MOORE: The witness is
10 excused. Mr. O'Brien has a question.

11 MR. O'BRIEN: Question for CAPE or the
12 applicant, but perhaps CAPE might know the answer
13 to this.

14 In terms of the City of Morro Bay, do
15 you have any idea what percentage of the City
16 lives beyond the one-mile radius? And number two,
17 how far is the furthest point within the city
18 limits from the Duke Power Plant?

19 MS. CHURNEY: I think there is a map
20 that's been provided by the applicant showing
21 concentric circles, and approximately how much of
22 the City is outside the one-mile concentric
23 circle.

24 And just based on what I know about the
25 City, I'd say at least half, if not more, of the

1 City is outside that one mile mark.

2 PRESIDING MEMBER MOORE: All right,
3 thank you. Let's go to CAPE's second witness.

4 MS. CHURNEY: I call Jack McCurdy as a
5 witness.

6 PRESIDING MEMBER MOORE: Mr. McCurdy's
7 going to need to be sworn in.
8 Whereupon,

9 JACK McCURDY
10 was called as a witness herein, and after first
11 having been duly sworn, was examined and testified
12 as follows:

13 DIRECT EXAMINATION

14 BY MS. CHURNEY:

15 Q Mr. McCurdy, could you briefly state
16 your background for the record?

17 A I've been a resident of Morro Bay for 20
18 years. I'm a retired newspaper reporter.

19 Q And have you submitted a written
20 declaration in this proceeding?

21 A Yes, I have.

22 Q And do you have any additions or
23 corrections to make to the declaration that you
24 submitted?

25 A No, I do not.

1 Q Are all statements made in that
2 declaration true and correct to the best of your
3 knowledge?

4 A Yes, they are.

5 Q And the opinions stated therein are your
6 own?

7 A Pardon?

8 Q The opinions stated in the declaration
9 are your own?

10 A Yes, they are.

11 MS. CHURNEY: I would offer the
12 declaration into evidence as exhibit 122.

13 PRESIDING MEMBER MOORE: 122. Are there
14 any objections to taking this into evidence?

15 MR. ELLISON: Yes, Commissioner, we do
16 object to the inclusion within the declaration of
17 the attached exhibits, and I can go through them
18 one by one and state our objections to each of
19 them.

20 With respect to the FERC statement of
21 policy and the associated testimony in the
22 declaration, if you refer to that statement of
23 policy beginning at the second sentence, you will
24 see that it applies only to electric power
25 transmission grid and gas and oil pipeline

1 systems. It does not apply to power plants.

2 And I will read into the record that
3 statement: The Commission understands that
4 electric gas and oil companies may" emphasize may
5 "need to adopt new procedures, update existing
6 procedures and install facilities to further
7 safeguard their electric power transmission grid
8 and gas and oil pipeline systems.

9 This order does not apply to electric
10 generating facilities. There are no new
11 transmission facilities associated with this
12 project. And therefore we object to the inclusion
13 of that as irrelevant to this proceeding.

14 With respect to the newspaper articles,
15 these articles concern Diablo Canyon and the
16 possibility of terrorist attacks with respect to
17 that facility in particular.

18 And Diablo Canyon, because it is a
19 nuclear plant, is in a very different situation
20 with respect to that possibility than certainly a
21 fossil-fired gas plant such as the Morro Bay
22 facility.

23 So, again, we think that these newspaper
24 articles are not relevant to this proceeding.

25 PRESIDING MEMBER MOORE: Thank you. Mr.

1 Ellison, I'm going to override your objection and
2 allow this to come in. And your concerns are
3 noted, but I believe that in doing so I'm being
4 consistent with the intent that I expressed
5 earlier, which is that this does represent an
6 opinion; it backs up an opinion of Mr. McCurdy.
7 And I point to his sentence that says in part, it
8 says, documenting the Commission's, meaning the
9 FERC's, concerns about security matters and
10 safeguards for all electric gas and oil companies
11 and electric power transmission grid and gas and
12 oil pipeline systems.

13 So in that very very broad context, and
14 to use Mr. Valkosky's earlier phrase, I believe
15 that the newspaper articles that are included
16 here, and the inclusion of the FERC order
17 constitute hearsay evidence, and we'll admit it as
18 background in that context and use it as such.

19 So, that is then accepted into evidence.
20 It will be exhibit 122.

21 Counsel, is your witness available?

22 MS. CHURNEY: Yes.

23 PRESIDING MEMBER MOORE: Good, I have a
24 question.

25 Mr. McCurdy, we put you in this category

1 because frankly it looked as though this was in
2 the hazardous category, based on what's in item 3.
3 Where would you have assumed that you would have
4 fit into this proceeding?

5 MR. McCURDY: I could not determine
6 that.

7 PRESIDING MEMBER MOORE: Good, then we
8 made the right decision.

9 (Laughter.)

10 PRESIDING MEMBER MOORE: Okay. All
11 right. Let me turn to the applicant's counsel,
12 Mr. Ellison, cross-examine?

13 MR. ELLISON: Thank you, Commissioner.
14 I just want to restate for the record, just to
15 make sure it's crystal clear, that our objection,
16 while we accept your determination, was not based
17 on hearsay, it was based on relevance.

18 And again I would reiterate that the
19 concern we have with respect to the testimony and
20 the FERC order is that the FERC order, by its
21 terms, does not apply to generation facilities.

22 CROSS-EXAMINATION

23 BY MR. ELLISON:

24 Q With that understanding, Mr. McCurdy,
25 you expressed some concerns about the possibility

1 of terrorism with respect to the Morro Bay
2 facility.

3 Are you aware of any terrorist attack on
4 a natural gas fired electric generating facility
5 in the United States?

6 A No, I'm not.

7 Q Are you aware of any terrorist attack on
8 such a facility anywhere in the world?

9 A No, I'm not.

10 Q Do you agree that there is a distinction
11 with regard to the threat of terrorism between
12 facilities fueled by natural gas and those fueled
13 by a nuclear facility?

14 A In --

15 MS. CHURNEY: Objection, vague and
16 ambiguous --

17 MR. ELLISON: All right, I'll restate
18 the question.

19 BY MR. ELLISON:

20 Q In your mind is there any distinction
21 with regard to the threat of a terrorist attack
22 between a nuclear facility and a natural gas fired
23 facility?

24 A Only in terms of magnitude.

25 Q But with respect to magnitude, do you

1 agree that there is a distinction?

2 A Yes.

3 Q With respect to your testimony at page 2
4 you discuss the alleged failure of the FSA to
5 assess how the reactivation of the base by the
6 military will affect Duke's ability to use the
7 base as a laydown and staging area for
8 construction activities.

9 Have you attempted in any way to contact
10 the base to find out what their position is with
11 respect to this issue?

12 A No, I have not.

13 Q Do you have any basis for believing that
14 the base is no longer available to Duke, as you
15 testify here?

16 MS. CHURNEY: Well, I believe that
17 mischaracterizes the testimony.

18 MR. ELLISON: Let me rephrase the
19 question. That's fair.

20 BY MR. ELLISON:

21 Q You describe -- in the testimony you say
22 if the base is no longer available to Duke. With
23 reference to that, do you have any basis for
24 believing that it is not available to Duke?

25 A Only what I've read in the newspaper and

1 seen, observed in driving by there, the new
2 security restrictions.

3 Q And to your knowledge what is there
4 about the security restrictions that makes the
5 base unavailable to Duke?

6 A That it isn't open as it was before. It
7 would seem to be more secure and less available
8 for that kind of activity.

9 Q Has anything in anything that you have
10 read, or any conversation from anyone at the base,
11 has anyone told you or have you read that the
12 facility is not available to Duke?

13 A No. No one has.

14 MR. ELLISON: That's all I have, thank
15 you.

16 PRESIDING MEMBER MOORE: Thank you, Mr.
17 Ellison. Let me ask staff.

18 MS. HOLMES: No questions.

19 PRESIDING MEMBER MOORE: City?

20 MR. ELIE: No questions.

21 PRESIDING MEMBER MOORE: All right. Any
22 redirect?

23 MS. CHURNEY: No.

24 PRESIDING MEMBER MOORE: The witness is
25 excused. And on this topic let me ask if there's

1 anyone in the public who would like to address us
2 on the question of compliance, has a statement
3 that they'd like to make on compliance?

4 You're going to have to re-identify
5 yourself for the record. Sorry to be so formal
6 about this, but for those who would follow they
7 want to be able to track this.

8 MR. SMITH: I don't know if it's
9 appropriate to --

10 PRESIDING MEMBER MOORE: Please identify
11 yourself again.

12 MR. SMITH: Oh, Richard Smith, citizen
13 of Morro Bay 20 years.

14 PRESIDING MEMBER MOORE: Same spelling?

15 MR. SMITH: Same spelling, yes.

16 (Laughter.)

17 MR. SMITH: So much for levity. No, as
18 a citizen I've been concerned, we'd like some
19 information. What would happen if one of these
20 exposed gas main areas were struck by a small
21 explosion or a bullet or something like that?

22 I don't know how -- they're very
23 vulnerable, I notice, and I just -- but I don't
24 know what the consequences would be. So I don't
25 know how scared to be as a citizen.

1 PRESIDING MEMBER MOORE: Okay, I think
2 that topic is not in this one, but your concern is
3 noted, and I believe shared by anyone who travels
4 near anything that might be vulnerable. So we're
5 all extra cautious, I think, these days.

6 MR. ELLISON: To be clear, we are going
7 to be discussing similar issues in hazardous
8 materials.

9 PRESIDING MEMBER MOORE: Understand.
10 And that is going to come back.

11 All right. With that, --

12 MR. ELIE: Commissioner, before you
13 close this section, over here again.

14 PRESIDING MEMBER MOORE: Yes.

15 MR. ELIE: Point of order. Just would
16 like to note for the record the City's continuing
17 objection to closing this and the project
18 description based on the same factors set forth in
19 our motion.

20 PRESIDING MEMBER MOORE: You're so
21 noted, and of course, you're well aware of the
22 procedures that would prevail should you make a
23 successful challenge at a later date with more
24 information.

25 MR. ELIE: Just for the record we wanted

1 to make that noted. Thank you.

2 PRESIDING MEMBER MOORE: Understood.

3 All right, let's do this. Let's take a
4 five-minute break, and I mean really five minutes.
5 And then come back and we want to conduct a
6 hearing on -- a scheduling conference, I said
7 hearing -- a scheduling conference, and we'll talk
8 about all the topics to come up and the dates by
9 which we will file and hear testimony.

10 Five minutes, thanks.

11 (Brief recess.)

12 PRESIDING MEMBER MOORE: Let's come back
13 together. Everybody ready to rock-and-roll?
14 Rock-and-roll, okay, let's go.

15 We are now going to convene that
16 enjoyable part of the evening known as the
17 scheduling conference. We'll change hats here.

18 So let me read something into the record
19 and then I'll comment on it, and then we'll go
20 through the dates.

21 The scheduling conference is noticed in
22 our Committee's December 4, 2001 notice and order.
23 The purposes are essentially the same as those of
24 the November 29 prehearing conference. And that's
25 namely to ascertain who will present witnesses,

1 who desires to cross-examine, and the respective
2 amounts of time desired for direct testimony and
3 for cross-examination.

4 And I think we may have to go into a
5 penalty phase here for people who swear that
6 they're going to cross-examine for X and then go
7 to something different. Or maybe a tithing
8 system.

9 MS. HOLMES: I think they ought to get
10 rewarded for taking less time than they say.

11 PRESIDING MEMBER MOORE: And, of course,
12 the tithing system I'll never get any of that
13 money because it will simply change hands to the
14 people who take less time. And so think of it as
15 an economic incentive, kind of a small market here
16 that we're running.

17 All right. We've tentatively divided
18 the remaining topic areas into two groups which
19 I'll come to in a second. We've also provided
20 handouts regarding the tentative future filing and
21 hearing dates, as well as the presentation of
22 witnesses and the desire to cross-examine.

23 Using those handouts, first for group
24 two and then for group three, I need to have each
25 of the parties indicate whether there are any

1 corrections, additions, deletions to the witnesses
2 and cross-examination. And I'd like to know your
3 view on the tentative filing and hearing dates
4 reflected on the other handout.

5 Applicant and staff, as I said, as
6 appropriate should also provide any additional
7 information on the filing date for part two of the
8 FSA. I need to kind of understand what's
9 happening to that. It seems to me we may have
10 slipped past the date a tad again.

11 The status of the biological opinion,
12 which is obviously critical. The effect, if any,
13 of the recent US EPA rule on section 316 of the
14 Clean Water Act. Filing date for the appendices
15 to the biological resources portion of the FSA.

16 Nature and filing date for the
17 applicant's supplemental visual analysis. The
18 time required for staff to review the supplemental
19 visual information. And the nature of the product
20 that's going to come out of that.

21 And the filing date for part three of
22 the FSA, both with and without staff performing
23 and including that independent analysis of the
24 visual screening of the project that I just
25 indicated.

1 In addition, we have to cover tentative
2 scheduling as set forth in the scheduling handout,
3 as well as the acceptability of taking testimony
4 via conference call. Some of these matters were
5 raised by CAPE in a December 10 letter that I
6 believe everyone has a copy of.

7 We'll use that, all of this discussion
8 as a basis for the second hearing order which
9 we'll produce as rapidly as possible.

10 So, we'll use the same sequence to
11 discuss this that we've used in the past. Let me
12 go then to group two topics, if I can. In a
13 sense, to use the memorable phrase of Stan
14 Valkosky, who is here to debunk that phrase if
15 it's not right, the group two topics are not the
16 heaviest hitters, and they are fill-in-some-of-
17 the-blanks and get us back to the point where we
18 can consider those most critical issues later on.

19 So, let me ask for comments on those,
20 and on the witnesses, starting with the applicant,
21 ask Mr. Ellison if he's got comments.

22 MR. ELLISON: To make sure I'm following
23 along here you're looking for comments just on --

24 PRESIDING MEMBER MOORE: Group two
25 topics.

1 MR. ELLISON: -- group two topics, not
2 the proposed filing dates, but just the --

3 PRESIDING MEMBER MOORE: Right, I'm
4 going to --

5 MR. ELLISON: -- cross-examination
6 estimates?

7 PRESIDING MEMBER MOORE: -- I'm just
8 trying to break it into chunks that we can all
9 deal with.

10 MR. ELLISON: That's fine.

11 PRESIDING MEMBER MOORE: So right now
12 just group two topics.

13 MR. ELLISON: I frankly have not had
14 time to cross-check these against the estimates
15 that we gave in our prehearing conference
16 statement, but I assume that's where these come
17 from, and that they are consistent with that.

18 And assuming that that's the case we
19 would not have any changes in our estimated direct
20 or cross-examination in these areas.

21 I would emphasize, as I have before,
22 that our estimates of cross-examination can only
23 be made with respect to the staff, because that's
24 the only testimony that we have seen. So we do
25 not, at this time, have an estimate of cross-

1 examination with respect to any other party.

2 PRESIDING MEMBER MOORE: We don't have
3 anything down for land use for the applicant. Do
4 you have any estimate on time and witnesses on
5 land use at this point?

6 MR. ELLISON: Well, not having seen the
7 FSA it's very difficult to say that. We don't
8 know what sorts of issues we have with the staff
9 in that topic area at this point.

10 PRESIDING MEMBER MOORE: Okay.

11 HEARING OFFICER VALKOSKY: How about
12 just for your direct testimony?

13 MR. ELLISON: Well, even direct
14 testimony, if we have a lot of issues with the
15 staff it's going to be longer than if we don't
16 have very many issues with the staff. So, again,
17 if you're just looking for a place-holder, and I
18 say this with great trepidation, but I can tell
19 you that, you know, in terms of the relative
20 importance of the issues we think that land use is
21 a relatively important and somewhat complicated
22 issue.

23 But other than that, --

24 HEARING OFFICER VALKOSKY: Okay, would
25 it, and again I realize the difficulty, but I hope

1 the parties realize the Committee's difficulty,
2 because in attempting to schedule some of these
3 topics for future hearings we need at least a
4 rough estimate of the time that will be required.

5 So, with that said, can you identify
6 your witnesses for land use?

7 MR. ELLISON: By name, --

8 HEARING OFFICER VALKOSKY: Or give me a
9 number.

10 MR. ELLISON: Well, again, it's subject
11 to, you know, further decisions based upon what we
12 see in the final staff assessment. Our principal
13 witness on land use is likely to be Mr. Kirk
14 Marckwald. I doubt that we will have additional
15 witnesses, but we reserve the right to do that.

16 I would, for place-holder purposes, if
17 nothing else, I would assume that our direct
18 testimony on this issue would be approximately 30
19 minutes. And cross-examination, I really don't
20 know what to say. If you need a place-holder I
21 would say, you know, 30 minutes on that, as well.
22 But it's really very difficult to say anything at
23 this point.

24 PRESIDING MEMBER MOORE: Okay. All
25 right, let me turn to -- I understand your

1 difficulty, and I know you understand mine in
2 trying to get the schedule out, and working
3 against the clock in both directions here.

4 Staff, how do you feel about this set of
5 topics, witnesses identified and time?

6 MS. HOLMES: A couple of points. First
7 of all on land use, the witnesses for staff will
8 be Sue Walker and Mark Hamlin. And I'm guessing
9 it will be 20 minutes for direct. And 20 minutes
10 for cross.

11 And on air quality we had two hours
12 estimated for cross. I think that it's not going
13 to be that bad. I'd like to reduce that to 45
14 minutes.

15 PRESIDING MEMBER MOORE: Well, you know,
16 I'm reluctant to have you do that. I'm perhaps
17 not as optimistic on that topic as you are. And I
18 think I'm going to hold to a higher estimate just
19 for safety.

20 MS. HOLMES: Okay. Lastly, with respect
21 to identification of the District witnesses, the
22 District sent me -- the Air Pollution Control
23 District sent me an email a couple of days ago
24 where they identified seven people who worked on
25 preparation of the FDOC. And I can go over the

1 topics that each one of those addressed.

2 What we, of course, would like to find
3 out is whether or not they all need to show up or
4 whether there are --

5 HEARING OFFICER VALKOSKY: Right, and,
6 Caryn, is my understanding correct that consistent
7 with conduct in most prior cases, staff will, in
8 fact, be presenting APCD witnesses?

9 MS. HOLMES: Right. We've had
10 discussions with them about what that means and
11 how it will work. And we have both agreed that it
12 would be appropriate for the Air Pollution Control
13 District witnesses to be sponsored by staff.

14 PRESIDING MEMBER MOORE: Just for your
15 own information it is my intention to try and deal
16 with air quality as a single day of testimony. So
17 whatever we decide on, my intention is not to mix
18 that one up. And my intention is also to conclude
19 it in one day. So if there is a carryover it will
20 be because the Chairman of this meeting was
21 unfortunately not as strong as he should have
22 been. I don't know.

23 But I intend to hear that and conclude
24 it in a single day. Meaning that the other topics
25 conceivably could be done in a single day, or at

1 most, perhaps two days. So I think that starts to
2 bracket for everyone's imagination the amount of
3 time that my intention is, two days on group two
4 topics, with a spillover to a third day. So
5 that's my operating intention.

6 HEARING OFFICER VALKOSKY: At this time,
7 Caryn, do you have any informed guesstimate as to
8 how many witnesses from the District will, in
9 fact, be appearing?

10 MS. HOLMES: Well, I have a list. And
11 what I was hoping to be able to do tonight was to
12 let people know the specific topic areas within
13 the FDOC that each witness could answer questions
14 about. And then get an idea of whether or not
15 they all need to show up or not. So, can I --

16 PRESIDING MEMBER MOORE: Okay.

17 MS. HOLMES: -- would this be a good
18 time to walk through that?

19 PRESIDING MEMBER MOORE: Yes.

20 MS. HOLMES: I don't think there's any
21 doubt that Gary Willey's going to need to be here.
22 He was overall responsible for preparing the FDOC.

23 Larry Allen is the Planning Manager. He
24 had input into the discussion about CEQA impacts
25 and modeling. Paul Allen, he's the District's

1 Technical Services Manager. He's prepared to
2 answer questions about ambient air conditions, air
3 monitoring.

4 David Dixon is an Engineering Manager
5 for the District. He's prepared to talk about
6 federal requirements and some oversight and review
7 of the FDOC.

8 Bob Carr, he's the APCO. He's also
9 available to testify generally about how the
10 District management works and what the general
11 issues the District is concerned about.

12 Steve, I believe the name is pronounced
13 Ziemer, is a consultant who was hired for purposes
14 of providing input into the modeling analysis, and
15 the same with Chris Crabtree.

16 So, that gives you a sense of what each
17 one of the seven people is competent to testify
18 to. And if we could get a sense of whether or not
19 they all need to show up, that would be helpful
20 for the District and for staff.

21 PRESIDING MEMBER MOORE: You're asking
22 that question of the Committee?

23 MS. HOLMES: I'm asking that -- I'm
24 hoping that the other parties tonight will be able
25 to, when they provide input to the Committee about

1 scheduling concerns for the next set of hearings,
2 will be able --

3 PRESIDING MEMBER MOORE: Yeah, let me
4 give just a little bit of leeway on that. Can I
5 ask if you need tonight to think that over and to
6 work on it a bit, can you have your answer to
7 those questions or differences of opinion about
8 what we might come to tonight back to us by 3:00
9 tomorrow?

10 So, just to give a little extra time you
11 can fax it over to the office. That will give you
12 tonight to think about it and if you come to a
13 different conclusion that will give us still
14 overnight tomorrow and then into Wednesday to
15 produce the order.

16 So, it's a little constrained, but there
17 may be things that you hear tonight that you'd
18 want to ruminate on and come up with a different
19 conclusion about time, witnesses. And I'd just
20 like to give a little bit of extra time.

21 So, if that's acceptable, let's do that.

22 Any other comments, Ms. Holmes?

23 MS. HOLMES: We have no other comments
24 on the proposed schedule here.

25 PRESIDING MEMBER MOORE: All right.

1 From the City? You're going to have to identify
2 yourself, since you haven't --

3 MR. GROVEMAN: Yes, Commissioner, my
4 name is Barry Groveman; I'm Special Counsel to the
5 City of Morro Bay.

6 Just first, I don't want to belabor it
7 because I know you've heard it over and over
8 today, and we've already made the record before
9 with some of the documents we filed, but I want to
10 make it again, make sure the record is clear that
11 we are in opposition to the hearing on the 24th.

12 One of the problems that I have is the
13 report was due out on Friday, the second phase of
14 the FSA. We still don't have it. We're going
15 right into the holiday season. I understand it's
16 going to be a lengthy document. So we need time
17 to assess it. And I don't think we're being
18 provided that time.

19 So, for those reasons, our record is
20 clear that we oppose it. We don't think we've
21 been afforded the amount of due process and time
22 necessary to properly prepare this. And I think
23 the fact that it's not here, it was due on Friday,
24 warrants consideration.

25 With regard to the witnesses, Mr. Elie

1 is going to respond.

2 PRESIDING MEMBER MOORE: Mr. Elie.

3 MR. ELIE: Yes. On noise and vibration
4 our witness is Bill Dohm, D-o-h-m. On traffic and
5 transportation the witness is Steve Orosz,
6 O-r-o-s-z. And I guess I should say, not having
7 seen the documents it's obviously hard to give
8 estimates, and I concur with Mr. Ellison in that
9 regard as far as, you know, when we see the FSA on
10 more of these issues we'll know better on our time
11 estimates. But I would give us 30 minutes for the
12 cross on traffic and transportation.

13 On waste management, just a
14 typographical error, our second witness is John
15 Rohrer, R-o-h-r-e-r. And also a typographical
16 error on socioeconomics. Our witness' last name
17 is Niehaus, N-i-e-h-a-u-s.

18 On land use Greg Fuz, F-u-z, Mr. Powell,
19 I don't know his first name -- Tyson Powell and
20 Mr. Schultz. And in light of what went on tonight
21 with respect to the agreement to lease, I'm going
22 to over-estimate that as an hour and a half,
23 although that's probably, again, an over-
24 estimation depending on how things go. And then
25 30 minutes on cross.

1 And we don't have any testimony on
2 public health or air quality.

3 PRESIDING MEMBER MOORE: Thank you.

4 HEARING OFFICER VALKOSKY: Are the
5 existing estimates on noise and vibration, traffic
6 and transportation and waste management
7 acceptable? Got you down for an hour, an hour and
8 30 minutes on waste.

9 MR. ELIE: The first two, yes. I'm
10 hedging on waste management; I don't remember if
11 that's out in the FSA or not. It's getting late.
12 I don't remember seeing it. But it might be.

13 MS. HOLMES: Yes.

14 MR. ELIE: Is 30 minutes an estimate
15 that Mr. Schultz gave you last time?

16 HEARING OFFICER VALKOSKY: That is my
17 understanding, yeah. Mr. Fay prepared this, so --

18 MR. ELIE: Let me hedge it to 45 minutes
19 just to be safe.

20 HEARING OFFICER VALKOSKY: Okay.

21 PRESIDING MEMBER MOORE: All right, the
22 intervenors CAPE?

23 MS. CHURNEY: For noise and vibration,
24 Mr. Dubbink will not be testifying, but we would
25 like to reserve 30 minutes for an, as yet

1 unidentified, witness on that topic.

2 PRESIDING MEMBER MOORE: I'm sorry, I
3 missed that.

4 HEARING OFFICER VALKOSKY: I'm sorry, I
5 was --

6 PRESIDING MEMBER MOORE: We were
7 talking.

8 MS. CHURNEY: Mr. Dubbink will not be
9 testifying so you can delete that reference.
10 But -- on noise and vibration. But we would like
11 to reserve 30 minutes for a yet unidentified
12 witness to testify.

13 On traffic and transportation the 30
14 minutes reserved is fine, and it's Mr. Crotzer,
15 C-r-o-t-z-e-r.

16 And going back to noise and vibration
17 the 30 minutes for cross-examination is fine. And
18 then on traffic and transportation the 30 minutes
19 for cross-examination is fine, as well.

20 On waste management we have no direct
21 witnesses. And I don't believe we had reserved
22 any time for cross-examination.

23 On hazardous materials again we do not
24 have a witness, although we've reserved 30 minutes
25 for cross-examination, and that's fine.

1 On socioeconomics we had not previously
2 indicated a witness. We would like to reserve 30
3 minutes, however, at this point for a, as yet
4 unidentified, witness. And the cross-examination
5 indicated is fine at 30 minutes.

6 Land use, we have the same problem as
7 everybody else has expressed in that we haven't
8 seen the FSA part two. But we would like to
9 reserve at least 30 minutes for a direct witness
10 not yet identified, and 30 minutes for cross-
11 examination.

12 Public health is fine as stated. No
13 direct witness. But 30 minutes on cross-
14 examination.

15 Now, with respect to air quality you
16 wanted our input by tomorrow or do you want --

17 HEARING OFFICER VALKOSKY: Actually I
18 think we want it both ways. If you can give us
19 some guidance today, subject to change by 3:00
20 tomorrow --

21 MS. CHURNEY: Sure.

22 HEARING OFFICER VALKOSKY: -- it would
23 be most helpful.

24 MS. CHURNEY: Let me make some changes
25 then to what we have previously indicated. I

1 would reduce Fairly to 30 minutes from two hours.
2 I would reduce Dawson to 30 minutes from two
3 hours. Reduce Hartman to 30 minutes. And Donald
4 is merely going to authenticate documents. And if
5 it could be done by submitting a declaration
6 without calling a live witness I would propose, in
7 the interests of time, doing it that way.

8 I would add, as a direct witness,
9 Soderbeck, Pamela Soderbeck.

10 PRESIDING MEMBER MOORE: Soderbeck.

11 MS. CHURNEY: S-o-d-e-r-b-e-c-k.

12 PRESIDING MEMBER MOORE: Okay.

13 MS. CHURNEY: For 45 minutes. And
14 cross-examination time, and this would be for all
15 of the witnesses, it's hard to say given the
16 number of witnesses that staff will be calling,
17 but I would estimate at least an hour.

18 PRESIDING MEMBER MOORE: All right,
19 thank you. Let me, then, because this has come
20 back up again, let me just break from the sequence
21 that I had and go back to staff and the applicant.
22 And I need to ask some questions.

23 Sorry, Mr. Valkosky has some questions.

24 HEARING OFFICER VALKOSKY: The
25 suggestion was made that some of the witnesses may

1 be unavailable by other than teleconference. Is
2 there any objection to providing that option, Mr.
3 Ellison?

4 MR. ELLISON: Yes, we do object. The
5 problem with having witnesses testify by
6 teleconference is that you cannot observe the
7 witness. And that is particularly important for a
8 couple of reasons.

9 One, you don't know what they are
10 referring to. You don't know whether someone is
11 coaching them. You don't know necessarily even
12 who you're talking to.

13 So, I think it would be certainly
14 extraordinary in the context of these proceedings,
15 based on my experience, to do that and I think
16 there are good reasons that the Commission doesn't
17 do it that way.

18 HEARING OFFICER VALKOSKY: Okay, staff.

19 MS. HOLMES: Staff has used
20 teleconferencing to present its own witnesses in
21 at least one case that I'm aware of, and upon the
22 showing of facts indicating that it's necessary
23 and would otherwise make the evidence unavailable
24 to the Committee, we don't have an objection to
25 it.

1 PRESIDING MEMBER MOORE: City?

2 MR. ELIE: We're going to stay out of
3 that one.

4 HEARING OFFICER VALKOSKY: Okay, and
5 CAPE, since I believe it was your suggestion, I --

6 MS. CHURNEY: You understand that the
7 request was made based on the hardship of --

8 HEARING OFFICER VALKOSKY: Right, --

9 MS. CHURNEY: -- the --

10 HEARING OFFICER VALKOSKY: -- does that
11 pertain to specific witnesses, and if so, could
12 you identify them, please?

13 MS. CHURNEY: It would be with respect
14 to Fairly, Dawson and Hartman on air quality.

15 HEARING OFFICER VALKOSKY: Okay, those
16 are the only witnesses then?

17 MS. CHURNEY: Yes.

18 HEARING OFFICER VALKOSKY: On the group
19 two?

20 MS. CHURNEY: Yes.

21 HEARING OFFICER VALKOSKY: Okay, thank
22 you. Thank you for the clarification.

23 PRESIDING MEMBER MOORE: All right, let
24 me go back to staff and let's talk about the FSA,
25 part two. Did we not have a deadline that we've

1 missed, and if, unless I'm mistaken, what are we
2 going to do about filing at this point?

3 MS. HOLMES: Before Kae gets into it I
4 need to make one more comment about the schedule.

5 PRESIDING MEMBER MOORE: Okay.

6 MS. HOLMES: She's informed me that we
7 have a witness for waste management and hazardous
8 materials who's only available on the 28th and the
9 29th.

10 PRESIDING MEMBER MOORE: On the 28th and
11 29th?

12 MS. HOLMES: Right. This witness is not
13 available on the 24th, 25th or on the 30th.

14 HEARING OFFICER VALKOSKY: So, in other
15 words are you talking about Mr. Greenberg?

16 MS. HOLMES: That's who I would be
17 talking about.

18 HEARING OFFICER VALKOSKY: Yes, okay.
19 And he is available only on the 28th and 29th?

20 MS. HOLMES: Right. And since you
21 talked about reserving --

22 HEARING OFFICER VALKOSKY: No, that's --

23 MS. HOLMES: -- three days, I --

24 HEARING OFFICER VALKOSKY: -- that's
25 fine, thank you.

1 PRESIDING MEMBER MOORE: Okay, Kae,
2 let's talk about the FSA.

3 MS. LEWIS: That FSA part two will be
4 filed on Wednesday, the 19th.

5 PRESIDING MEMBER MOORE: What caused the
6 delay?

7 MS. LEWIS: One of our sections needed
8 some additional work.

9 PRESIDING MEMBER MOORE: Wednesday. The
10 status of the biological opinion?

11 MS. LEWIS: At the moment we are still
12 waiting for U.S. Fish and Wildlife to indicate to
13 us if the consultation is going to be formal or
14 informal.

15 On November 27th the US EPA sent a
16 letter to Fish and Wildlife recommending an
17 informal consultation. However, they also
18 indicated that if Fish and Wildlife thought it
19 best to do a formal consultation that they should
20 consider that letter a request for a formal.

21 So, our last communication with U.S.
22 Fish and Wildlife they still did not have all the
23 materials that they felt they needed to evaluate
24 and make this decision.

25 So we do not know when we are going to

1 get that.

2 PRESIDING MEMBER MOORE: As a result of
3 that did they make a request for more materials,
4 specific more materials?

5 MS. LEWIS: They may have from the
6 applicant, not from us.

7 PRESIDING MEMBER MOORE: Mr. Ellison, do
8 you have anything you can add that will elucidate
9 this?

10 MR. ELLISON: Our discussions with U.S.
11 Fish and Wildlife Service suggest that they are
12 still intending to do an informal consultation.
13 That they do have some additional information
14 needs that they're looking to the applicant to
15 provide related to some new discoveries of banded
16 dune snails, not on the property, I emphasize, but
17 in the vicinity. And we're going to be providing
18 that information.

19 We have other people here who can get
20 into more detail about those conversations. I was
21 not directly a party to them, but that's what I
22 understand.

23 PRESIDING MEMBER MOORE: And do you have
24 a date that that informal consultation is likely
25 to take place, an estimated date?

1 MR. ELLISON: End of January.

2 PRESIDING MEMBER MOORE: So if we put
3 down for our records January 30, would we be off
4 target?

5 MR. ELLISON: That's the end of January.

6 (Laughter.)

7 PRESIDING MEMBER MOORE: You could be
8 optimistically estimating the last week in
9 January, however.

10 MR. ELLISON: No, I don't know that we
11 can be any more precise than that; that's what
12 they're telling us. Their track record of meeting
13 deadlines is what it is, but we are certainly
14 relying upon those estimates. And I think those
15 estimates come from them very recently. And so I
16 think that's the best date that we can use at this
17 point.

18 PRESIDING MEMBER MOORE: Okay. And to
19 go back to staff, the effect of the most recent US
20 EPA rule change on the Clean Water Act?

21 MS. HOLMES: It's our understanding that
22 the rules that were promulgated in November, I
23 believe it was, clarified that the intake
24 structure will be deemed to be an existing intake
25 structure and hence not subject to the regulations

1 which apply only to new intake structures.

2 We're been working with the Regional
3 Board on this issue.

4 HEARING OFFICER VALKOSKY: So in other
5 words, it is your understanding that that recent
6 rule change would not delay further any of the
7 analysis required?

8 MS. HOLMES: That's correct.

9 HEARING OFFICER VALKOSKY: Thank you.

10 PRESIDING MEMBER MOORE: Okay. The
11 filing date of the most recent appendices on the
12 biological?

13 MS. LEWIS: We do have two reports that
14 we're finishing at the moment. One is the cooling
15 options report; the other is the habitat
16 equivalency study. And we do hope to file these
17 within two weeks, meaning that they will be filed
18 for public review prior to the FSA part three.

19 PRESIDING MEMBER MOORE: So, your
20 estimate on dates, then, for two of those is two
21 weeks away, right?

22 MS. LEWIS: Right, so that's say
23 December 30th, if that's not a weekend. And for
24 FSA part three --

25 PRESIDING MEMBER MOORE: We'll come to

1 that.

2 MS. LEWIS: Okay.

3 PRESIDING MEMBER MOORE: All right, so
4 that's for everything still due in those
5 appendices for the FSA part two, your estimate is
6 they'll be in hand on the 30th of this month?

7 MS. LEWIS: Right.

8 PRESIDING MEMBER MOORE: Okay. All
9 right. Any other topics? Mr. Valkosky is asking
10 me to make sure we're talking about group two, any
11 other additions, changes? Things I haven't
12 thought of? Mr. Ellison.

13 MR. ELLISON: Well, we're not yet
14 talking about filing dates, right?

15 HEARING OFFICER VALKOSKY: No, that's
16 not --

17 PRESIDING MEMBER MOORE: No, that's the
18 last topic.

19 HEARING OFFICER VALKOSKY: That is
20 correct, we're not.

21 MR. ELLISON: With that understanding,
22 no.

23 PRESIDING MEMBER MOORE: All right,
24 let's go to group three topics. And we've
25 tentatively scheduled the time period 25, 28, next

1 year for these topics: biological, cultural, soil
2 and water, visual and alternatives.

3 Clearly there is no document. It's a
4 little hard to be able to tie down the
5 commitments, but if there are any, Mr. Ellison, at
6 this point that you already know, can you give us
7 the benefit of your wisdom?

8 MR. ELLISON: Well, this would be a real
9 shot in the dark. I really -- I mean if you want
10 me to take a wild guess, I could do that, but
11 that's all --

12 PRESIDING MEMBER MOORE: I don't. I
13 only want you to take an educated guess on that.
14 Any educated guesses on the part of staff for
15 timing? Why don't we talk about the dates, stay
16 on a high plane here. Does that date block look
17 like it's going to be achievable, the group three
18 topics?

19 MS. HOLMES: Well, we're discussing,
20 since this is more informal than we were earlier
21 this evening, is that we're concerned about the
22 status of the biological opinion, and not getting
23 an indication from U.S. Fish and Wildlife Service
24 of where they're headed.

25 As the Committee well knows from this,

1 what we've said in this case and in previous
2 cases, we need to know that the U.S. Fish and
3 Wildlife Service is comfortable with the kinds of
4 conditions that staff is recommending.

5 PRESIDING MEMBER MOORE: Right.

6 MS. HOLMES: We're not there yet, and
7 it's my understanding that it sounds like we may
8 not be there till the end of January.

9 PRESIDING MEMBER MOORE: Which then
10 throws --

11 MS. HOLMES: Which then has a --

12 PRESIDING MEMBER MOORE: -- this off.

13 Well, let me just say, as a matter of policy,
14 while I trifurcated the analysis and the
15 presentations, I'm not going to go any farther
16 than that. That's it.

17 So, if the third group of items -- well,
18 actually I would work the other way around, and
19 perhaps I should have in the group two topics.
20 Are there topics in group three that more properly
21 should be moved up into group two that are likely
22 to be ready at an earlier date?

23 MS. HOLMES: It would be appropriate, I
24 think, to move cultural, soil and water and visual
25 into the second set of hearings.

1 PRESIDING MEMBER MOORE: Let me take
2 cultural, soil and water and say just those two.
3 I want to stay away from visual for a second. And
4 turn back to the applicant.

5 Mr. Ellison, would you support having
6 those two moved up into the group two filing?

7 MR. ELLISON: Certainly the earlier the
8 better as far as we're concerned.

9 PRESIDING MEMBER MOORE: So do you see
10 any mechanical difficulties dealing with cultural
11 and soil and water issues in the group two
12 grouping? I sound like Monty Python.

13 (Laughter.)

14 MR. ELLISON: No, we think that can be
15 dealt with in those hearings. We agree with staff
16 on that.

17 PRESIDING MEMBER MOORE: City, let me
18 put the same comment to you. Trying to deal with
19 logical groupings of information. And I'm making
20 the assumption that the information is available
21 in a way that people can analyze.

22 So, if you'll allow me those
23 assumptions, then do you have a problem with those
24 two topic areas moving into group two?

25 MR. ELIE: It certainly seems logical.

1 I'm just concerned about how ambitious we
2 already -- the group two already is with the time
3 allotted assuming we go forward then.

4 PRESIDING MEMBER MOORE: Right.

5 MR. ELIE: And if there was something to
6 move back to three from group two, to swap, so to
7 speak, that might be -- I don't know, but
8 otherwise I'll defer.

9 PRESIDING MEMBER MOORE: Right.

10 MR. ELIE: We'll be ready if we have to
11 be.

12 PRESIDING MEMBER MOORE: And the logical
13 candidate, of course, is land use.

14 MR. ELIE: Right, exactly.

15 PRESIDING MEMBER MOORE: To move
16 backwards. But that's a decision that could be
17 made at that time based on the amount of
18 information we have before us.

19 Intervenors CAPE, response? Same
20 question.

21 MS. CHURNEY: Let me just ask for
22 clarification. Does soil and water include just
23 the fresh water issues as opposed to the marine
24 water issues?

25 MS. HOLMES: The marine water issues are

1 covered to the extent that they address water use.
2 But in terms of --

3 PRESIDING MEMBER MOORE: Biological --

4 MS. HOLMES: -- the biological impacts,
5 those are in biology.

6 MS. CHURNEY: As I indicated earlier, I
7 have not been retained to deal with the marine
8 biological or the water uses at all, so I'll let
9 Henriette Groot address those two issues.

10 With respect to cultural there's no
11 objection to moving that. With respect to visual
12 there's no objection.

13 PRESIDING MEMBER MOORE: Well, visual,
14 as I said, I separated that. I want to deal with
15 that separately. So, Dr. Groot.

16 DR. GROOT: Well, I'm sorry I don't see
17 how you can separate the marine impacts from the
18 water use, because the larvae that are being
19 impacted are in the water, or do I misunderstand
20 something?

21 PRESIDING MEMBER MOORE: Well, I think
22 you do misunderstand. What staff is talking about
23 is that the marine issues are dealt with under the
24 biological category. They're not trying to
25 pretend that they don't exist in the water issues.

1 Just that this soil and water category deals with
2 the fresh water issues, the onshore issues.

3 MS. HOLMES: It also deals with the
4 volume of water, of ocean water that will be used.
5 I mean that topic is relevant to biology, as well,
6 but there is a discussion in the FSA on soil and
7 water about the volume of ocean water that will be
8 used.

9 DR. GROOT: And I should mention that we
10 have consistently disputed Duke's estimate of
11 water use, and have submitted the papers on that.

12 PRESIDING MEMBER MOORE: Okay, well,
13 that's not an issue tonight. All right, so your
14 point would be you'd rather soil and water did not
15 get separated; that it, in fact, appeared with
16 biology in the same grouping?

17 DR. GROOT: That's correct.

18 PRESIDING MEMBER MOORE: Okay. Got it.

19 Now let me go to the area that I -- is
20 anybody willing to fill in the blanks on people at
21 this point? Any commitments to people in any of
22 these group three categories? Okay.

23 MS. CHURNEY: With respect to cultural
24 I'd just indicate that CAPE will have no
25 witnesses.

1 PRESIDING MEMBER MOORE: Okay. We're
2 accepting the no-witness category, as well.

3 (Laughter.)

4 PRESIDING MEMBER MOORE: It's a zero
5 option. All right, then let me go then to visual.
6 And so let me ask the questions that I talked
7 about before.

8 What's the nature and the filing date
9 for the applicant's supplemental visual analysis?

10 MR. ELLISON: With respect to the nature
11 of the analysis, first of all let me say that we
12 have met with the Coastal Commission who expressed
13 this concern in a letter from Mr. Douglas, as you
14 know. And reviewed with them what we proposed to
15 do as the supplemental analysis.

16 And in that meeting Mr. Douglas and his
17 staff agreed that what we proposed to do is
18 sufficient for their purposes.

19 What we propose to do is to submit
20 testimony regarding the feasibility of full
21 enclosure at the site. We are going to submit,
22 and I want to be very clear about this, we are
23 going to submit visual depictions of the size, the
24 dimensions of what the stack height would be, and
25 what the full enclosure facility would be.

1 These are not going to be KOPs in the
2 sense that people have seen them in the past; but
3 rather existing depictions that we've done with
4 drawings on top of them to show what the
5 dimensions of the full enclosure --

6 PRESIDING MEMBER MOORE: You mean the
7 scale --

8 MR. ELLISON: What the scale would be.
9 But we are also going to address issues such as
10 you heard today, the site is very constrained and
11 there are a variety of issues related to the
12 feasibility of full enclosure that we're going to
13 address in testimony.

14 Again, we have discussed this with the
15 Coastal Commission and they are satisfied that it
16 is sufficient for their purposes.

17 In terms of when we would be prepared to
18 do that, we can -- what we'd prefer to do is to
19 advise the Committee by 3:00 tomorrow, because our
20 visual people are not here. And I want to confirm
21 with them exactly where they are in doing that.

22 But it's certainly within the timeframes
23 that are set for visual here. It won't affect the
24 schedule. We will be more than ready.

25 PRESIDING MEMBER MOORE: Let me ask the

1 question a slightly different way then. When
2 would the analysis -- I'm sorry, when would the
3 document and I'm assuming a computer aided model
4 of some kind be made available to staff to
5 analyze? How much lead time were you anticipating
6 before this came up that staff would have a chance
7 to look at this, and prepare their response?

8 MR. ELLISON: Well, again, subject to
9 check with our visual people and we will confirm
10 this by tomorrow, we could provide this
11 information to staff within two weeks.

12 I want to emphasize another point,
13 though, in terms of providing this information to
14 staff. And that is in our prehearing conference
15 there was some suggestion that staff has not done
16 an independent analysis of the need for full
17 enclosure. We think that's an incorrect
18 statement. Staff has done an independent visual
19 analysis. And it is contained in their FSA that
20 they have put forward, and they have concluded
21 that there is no basis for requiring any kind of
22 full enclosure. That is an independent analysis.

23 So what we are doing now, and I want to
24 be very clear about this, is looking at the
25 impacts of a mitigation measure which staff has

1 independently concluded there is no legal basis
2 for requiring. That's quite extraordinary.

3 But with that understanding, we could
4 provide this information to staff within two
5 weeks, and well in advance of the proposed hearing
6 on visual.

7 In fact, if the Committee is looking for
8 a topic that could be moved up from group three to
9 group two, we think the visual may be a candidate
10 for that.

11 PRESIDING MEMBER MOORE: I suspect that
12 you're right, and other parties may agree. But,
13 again, I need to get the parametrics on the table.

14 And, also, Mr. Ellison, when you send
15 your response back in would you give us your best
16 estimate of the filing date for part three of the
17 FSA, what you think is needed in terms of a
18 reaction of how much time you'll need to analyze
19 that prior to the group three hearings?

20 So, I'd like to hear your notation on it
21 when you send your other comments in.

22 MR. ELLISON: We will do that. We have
23 some comments on the proposed filing dates that we
24 could give you tonight. And I'd be prepared to do
25 that --

1 PRESIDING MEMBER MOORE: Not right this
2 instant, though. I'm leading ahead, as part of
3 your submittal.

4 MR. ELLISON: That's fine. I do want to
5 also say that with respect to the group three
6 issues and the concern that was expressed a moment
7 ago about staff needing to resolve conditions of
8 certification with the other agencies interested
9 in marine biology, that it has been our
10 understanding and we've had this discussion before
11 so I'll be brief, that there is a difference
12 between staff having time to resolve those issues
13 and actually having to have in-hand the informal
14 consultation, as the final document.

15 And the schedule that we have discussed
16 previously and the discussions that we've had with
17 staff previously have never, in our opinion at
18 least, assumed that staff had to have the final
19 document before we could go into hearings.

20 But what staff, we understand, does need
21 is to have U.S. Fish and Wildlife Service
22 sufficiently far down the track towards producing
23 one that they can intelligently discuss the
24 issues.

25 And I remind the Committee that one of

1 staff's proposals in their motion on this issue
2 was that they could have either the opinion,
3 itself, or the ability of U.S. Fish and Wildlife
4 Service witnesses to attend the hearing and
5 address staff's proposed conditions.

6 PRESIDING MEMBER MOORE: Your point is
7 made again. All right. Turn to staff, please,
8 and on the visual element, how much time do you
9 think you will need to do the analysis?

10 MS. LEWIS: We would need one week from
11 the time that we receive the applicant's
12 testimony.

13 PRESIDING MEMBER MOORE: Okay. Let me
14 just clarify one issue. With regard to your week,
15 that's a calendar week that you're talking about?

16 MS. HOLMES: Yes.

17 MS. LEWIS: Yes.

18 PRESIDING MEMBER MOORE: So it comes in
19 on Wednesday, it's back out on a Wednesday?

20 MS. HOLMES: Yes.

21 PRESIDING MEMBER MOORE: And I'm going
22 to need a filing, an estimate of filing date for
23 part three of the FSA. So that's got to include
24 both with and without you performing the
25 independent analysis of the visual screening of

1 the project. Any estimates on that? Or are you
2 going to defer until 3:00 tomorrow?

3 MS. HOLMES: I think our concern really
4 is about the biology is we had originally proposed
5 a date, I think, of January 14th. And if we are
6 able to get the information that we need from U.S.
7 Fish and Wildlife Service, that's still a viable
8 date.

9 But the concern is that before we
10 publish the FSA we need some sort of confirmation
11 from U.S. Fish and Wildlife Service that we're on
12 the same page as they are with respect to
13 mitigation.

14 PRESIDING MEMBER MOORE: And so does
15 your date is then, given that date, your date on
16 the FSA is independent of whether you do an
17 independent analysis of visual or not, because
18 that week would take you up to that date in any
19 case?

20 MS. HOLMES: Right. Well, it sounds
21 like if Duke is planning to get us something --

22 PRESIDING MEMBER MOORE: In two weeks.

23 MS. HOLMES: -- in two weeks, and we
24 take a week to respond to it that's not going to
25 be the --

1 PRESIDING MEMBER MOORE: It's just
2 simply not a factor.

3 MS. HOLMES: Right.

4 PRESIDING MEMBER MOORE: All right.
5 Other comments about -- I've got your comments on
6 the movement of soil and water and visual.
7 Alternatives has to remain where it is in the
8 group three.

9 MR. ELIE: Mr. Commissioner, City. Just
10 to advise you, our witness on visual is Gary Clay.
11 I'll give a 45 minute estimate for now, that's
12 just in case you move it to part two.

13 PRESIDING MEMBER MOORE: Okay.

14 HEARING OFFICER VALKOSKY: I'm sorry?

15 PRESIDING MEMBER MOORE: Clay.

16 MR. ELIE: Gary Clay.

17 HEARING OFFICER VALKOSKY: C-l-a-y,
18 thank you.

19 MR. ELIE: Yes. Forty-five minutes.

20 PRESIDING MEMBER MOORE: Forty-five
21 minutes, okay. Thank you.

22 MS. HOLMES: Do you want the names of
23 staff's witnesses on cultural at this point if
24 you're going to --

25 PRESIDING MEMBER MOORE: Sure if you

1 know them.

2 MS. LEWIS: It's Dorothy Torres.

3 PRESIDING MEMBER MOORE: Okay.

4 MS. LEWIS: And Gary Reinohl.

5 PRESIDING MEMBER MOORE: Okay.

6 Estimate?

7 MS. HOLMES: Fifteen minutes.

8 PRESIDING MEMBER MOORE: Okay.

9 MS. HOLMES: For cross-examination 15
10 minutes.

11 PRESIDING MEMBER MOORE: All right. If
12 by tomorrow you've identified more of the
13 witnesses or you make another estimate then I'd
14 certainly appreciate having them; it's going to
15 help my planning considerably.

16 MR. ELIE: Did you want our witness on
17 cultural?

18 PRESIDING MEMBER MOORE: Sure.

19 MR. ELIE: David Stone.

20 PRESIDING MEMBER MOORE: Stone. Time?

21 MR. ELIE: Thirty minutes. Thirty for
22 cross.

23 PRESIDING MEMBER MOORE: Okay. All
24 right, in the cross I'm going to put 30 minutes
25 for intervenors CAPE, as well, and assume that

1 that time will be approximately the same for the
2 applicant.

3 MS. DUNTON: I'd like to address the
4 Commission as an intervenor on cultural resources.

5 PRESIDING MEMBER MOORE: Okay. You can
6 have the microphone right there.

7 MS. DUNTON: I basically agree with the
8 primary staff assessment, but since I haven't seen
9 the final staff assessment I wanted -- would like
10 to reserve time for two witnesses.

11 PRESIDING MEMBER MOORE: Okay, do you
12 know their names?

13 MS. DUNTON: Yeah, Rob Wood from the
14 Native American Heritage Commission.

15 PRESIDING MEMBER MOORE: Okay.

16 MS. DUNTON: Probably 30 minutes.

17 PRESIDING MEMBER MOORE: Okay.

18 MS. DUNTON: And then John Burch.

19 PRESIDING MEMBER MOORE: B-i-r-c-h?

20 MS. DUNTON: B-u-r-c-h, 30 minutes.

21 PRESIDING MEMBER MOORE: Okay.

22 MS. DUNTON: And then maybe set aside
23 for 30 minutes cross-examination.

24 PRESIDING MEMBER MOORE: Thank you.

25 MS. DUNTON: Okay, thank you.

1 PRESIDING MEMBER MOORE: Thanks. Okay.

2 Let me go then to the filing and hearing dates.

3 Do you have a witness that you can
4 identify already for cultural, Mr. Ellison?

5 MR. ELLISON: It would be Mr. Bob Mason,
6 as well as a supporting witness of Mr. Bob
7 Cochran.

8 PRESIDING MEMBER MOORE: And if I allow
9 30 minutes for them, will that be sufficient?

10 MR. ELLISON: It will be.

11 PRESIDING MEMBER MOORE: Thank you. All
12 right, now I'm going to go to the dates, the
13 dreaded dates.

14 You know, we publish these. I admit
15 that this has been a moving target; we've tried to
16 adjust accordingly, while keeping it as tight as
17 possible.

18 Mr. Ellison, do you have comments on the
19 proposed dates?

20 MR. ELLISON: We do have comments. We
21 are concerned about two things in this schedule.
22 The first is the bifurcation of the date for the
23 applicant filing testimony from other parties
24 filing testimony on group two and group three
25 issues.

1 That does two things to the proceeding.

2 First of all, it prolongs it by two weeks times
3 two, or a month. And secondly, we believe it
4 creates a real due process problem because it
5 gives other parties two bites at rebuttal and the
6 applicant only one.

7 So we would register a strong objection
8 to that.

9 PRESIDING MEMBER MOORE: So you'd
10 collapse your filing to that of the other parties?

11 MR. ELLISON: That's correct. That's
12 what we did with the part one issues, and we think
13 the same procedure should apply to part two and
14 part three.

15 And that also takes us to the next
16 concern we have, which is that the January 7th
17 date for the filing, as it presently stands, for
18 the filing of the applicant's testimony on group
19 two topics would have us drafting our testimony
20 between whenever part two comes out, over
21 Christmas, over New Years, and then filing
22 immediately after New Years.

23 So we would propose to slip the
24 applicant testimony, not slip the hearings, but to
25 slip that back to either the 16th, when the other

1 parties file testimony on group two issues, or if
2 the Committee feels that there ought to be a
3 little more time, to find some date between the
4 7th and the 16th for the applicant and other
5 parties to file on group two.

6 With respect to group three, again we
7 would want to see the applicant and all other
8 parties file at the same time. We think there are
9 some time savings that result from that that might
10 allow things to proceed more quickly.

11 But assuming that you don't capture
12 those savings we would at least want to have the
13 same filing date.

14 PRESIDING MEMBER MOORE: Thank you, Mr.
15 Ellison. Staff?

16 MS. HOLMES: I guess I have some
17 concerns about not receiving any of the other
18 parties' testimony until just a week before the
19 hearings start on the 24th. So my preference, if
20 the dates are collapsed, would be to move them
21 back rather than to move them forward.

22 I find that the more time we actually
23 have to prepare for hearings, in other words the
24 more time we have to review people's testimony,
25 the more focused and directed our questions can be

1 and the faster the hearings go.

2 PRESIDING MEMBER MOORE: And as a rule
3 of thumb you'd like how much time?

4 MS. HOLMES: That's an open-ended
5 question.

6 PRESIDING MEMBER MOORE: Of course it
7 is. I'm not saying you'll get it, I'm just --
8 this is your chance to --

9 MS. HOLMES: Ten days would be very
10 nice.

11 PRESIDING MEMBER MOORE: Ten. All
12 right.

13 MS. HOLMES: I would -- never mind, I
14 won't say that.

15 PRESIDING MEMBER MOORE: Since I didn't
16 know what you weren't going to say, then I won't
17 hear it.

18 Other comments, dates? The City?

19 MR. ELIE: Obviously the later the
20 better since we're not -- we don't even have the
21 FSA part two, we don't know the scope and extent
22 of it. And the same thing with part three. So,
23 although I understand counsel's concern for the
24 staff, -- we need time when it's not over the
25 holidays to prepare. So that's a consideration,

1 as well. Just as Mr. Ellison's folks don't want
2 to work during Christmas and New Years, although
3 we all are going to be working during Christmas
4 and New Years, the pressure point of that is
5 obviously dramatic.

6 And in light of our other concerns as
7 the City has expressed time and again here, I
8 would say I would request that you not push it
9 back or make it any earlier than it already is.

10 PRESIDING MEMBER MOORE: All right.
11 Intervenors CAPE?

12 MS. CHURNEY: We don't object to having
13 all testimony filed at one time, but we would urge
14 the Committee to use the dates that allow the
15 parties the most time. So we concur with what has
16 just been expressed by the City.

17 We would suggest that you use January
18 16th and February 15th as the dates on which all
19 testimony must be filed.

20 PRESIDING MEMBER MOORE: Thank you.

21 All right, any other housekeeping items
22 that -- I'm sorry, Mr. Valkosky has one.

23 HEARING OFFICER VALKOSKY: Okay, this is
24 a lot simpler. We had, in the first hearing
25 order, to my understanding, January 4th and

1 January 10th as briefing dates.

2 Given that we now have all the testimony
3 in on the matters that will be covered in those
4 briefs, is there any objection to those dates? Or
5 would the parties prefer to change them?

6 Mr. Ellison?

7 MR. ELLISON: Well, that is one issue
8 that I wanted to at least pose a question about.
9 And that is whether the transcripts of today's
10 hearing will be available in time to produce a
11 brief on the 4th.

12 HEARING OFFICER VALKOSKY: The
13 transcripts of today's hearing were ordered on an
14 expedited basis. My understanding is that
15 typically that means it's five days if the hearing
16 is not excessively long.

17 (Laughter.)

18 MS. HOLMES: In other words we've all
19 shot ourselves in the foot.

20 HEARING OFFICER VALKOSKY: Yeah, I think
21 so. So, really what that means is a week from
22 tomorrow is Christmas. That's the reason I raise
23 it. It's unlikely they'd be available until after
24 Christmas in my estimation.

25 MR. ELLISON: Well, from the applicant's

1 point, let me put it this way. If it's important
2 to the Committee to maintain the schedule in this
3 proceeding and keep it moving, to file a brief on
4 the 4th, we are more than prepared to do that.

5 On the other hand, if it doesn't matter
6 to the overall schedule, then we would not object
7 to slipping that date so that the parties are not
8 writing briefs over the New Years.

9 It's entirely up to the Committee and
10 other parties, as long, again, as it doesn't
11 affect the rest of the schedule.

12 HEARING OFFICER VALKOSKY: That would
13 not. The only thing the Committee would want to
14 do is to avoid a brief and testimony or some other
15 filing being due on the same date. That's it.

16 Having said that, well, again it's
17 impossible to know, but I take it no party would
18 object to a slippage in the nature of a week on
19 those briefing dates. Is that a fair assumption?

20 MR. ELIE: The City would encourage
21 that.

22 (Laughter.)

23 MS. HOLMES: No objection.

24 MR. ELIE: Especially its attorneys.

25 HEARING OFFICER VALKOSKY: Fine, that's

1 something the Committee will have to wrestle with
2 in its next hearing order.

3 PRESIDING MEMBER MOORE: All right,
4 other housekeeping items? Mr. Ellison, you were
5 rising to a housekeeping item it looked like.

6 MR. ELLISON: No, the housekeeping item
7 was the transcript question.

8 PRESIDING MEMBER MOORE: Thank you.
9 Staff?

10 MS. HOLMES: No other comments.

11 PRESIDING MEMBER MOORE: City?

12 MR. ELIE: Nothing further.

13 PRESIDING MEMBER MOORE: Thank you.
14 Intervenors CAPE?

15 MS. CHURNEY: I just have one question
16 regarding the briefing. Because of the
17 interrelated nature of many of these topics may I
18 assume that although you want briefing for group
19 one topics, at whatever time you ultimately arrive
20 at, the parties would not be precluded from
21 revisiting portions of those topics should it be
22 necessary after group two and group three topics
23 are discussed and testimony is taken?

24 HEARING OFFICER VALKOSKY: That is
25 correct. What happens in a case like this, which

1 looks like it's going to be attenuated in time, is
2 that it assists in drafting the decision in
3 segmenting the topics into groups and disposing of
4 them to the extent possible.

5 That having been said, that does not, of
6 course, preclude something if in a later topic
7 it's, you know, you think it's relevant to bring
8 it in, or to bring it in in a later grouping, I'm
9 sorry.

10 MS. CHURNEY: And your --

11 HEARING OFFICER VALKOSKY: But to the
12 extent that it's possible, you know, we'd prefer
13 to just dispose of the topic as soon as we can.

14 MS. CHURNEY: And your scheduling order
15 will also cover the issue of the telephone
16 conferencing that was raised?

17 PRESIDING MEMBER MOORE: Yes, we will.

18 HEARING OFFICER VALKOSKY: For the group
19 two topics?

20 MS. CHURNEY: Yes.

21 HEARING OFFICER VALKOSKY: Or for the
22 topics contained in the scheduling order.

23 MS. CHURNEY: Right. It's only with
24 respect to air quality.

25 HEARING OFFICER VALKOSKY: Right. That

1 is -- okay, just one second. Yeah, that would be
2 the only one, okay.

3 MS. CHURNEY: Thank you.

4 HEARING OFFICER VALKOSKY: That's
5 correct.

6 PRESIDING MEMBER MOORE: All right,
7 ladies and gentlemen, with that we are adjourned.
8 And thank you very much for your attendance and
9 your courtesy.

10 (Whereupon, at 9:25 p.m., the hearing
11 was adjourned, to reconvene sine die.)

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CERTIFICATE OF REPORTER

I, JAMES A. RAMOS, an Electronic Reporter, do hereby certify that I am a disinterested person herein; that I recorded the foregoing California Energy Commission Hearing; that it was thereafter transcribed into typewriting.

I further certify that I am not of counsel or attorney for any of the parties to said hearing, nor in any way interested in outcome of said hearing.

IN WITNESS WHEREOF, I have hereunto set my hand this 23rd day of December, 2001.

JAMES A. RAMOS

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